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THE JUSTICE of the PEACE, AND PARISH OFFICER.

BY RICHARD BURN, L.L.D.

One of his MAJESTY's Juſtices of the Peace for the County of WESTMORLAND.

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Exciſe and Cuſtoms.

AS the cuſtoms and exciſe, ſo far as juſtices of the peace, conſtables and other peace officers, are concerned therein, are in ſome meaſure connected and interwoven with each other; it is thought proper here to repreſent them together, that the reader may at once have a full and diſtinct comprehenſion of the whole.

I. Of the cuſtoms in general.
II. Of the exciſe general.
III. Of the ſeveral goods in particular, under the management of the commiſſioners of the cuſtoms and exciſe.

I. Of the cuſtoms in general.

Note; There are two books of rates for aſcertaining the values of goods on importation, according to which the cuſtoms ſhall be paid; the one ſigned by Sir *Harbottle Grimſtone* baronet, ſpeaker of the houſe of commons, referred to, eſtabliſhed, and confirmed by the act of tonnage and poundage 12 *C.* 2. *c.* 4. The other, ſigned by *Spencer Compton*, eſquire, ſpeaker of the houſe of commons, being an additional book of rates of goods imported, not particularly ſpecified in the former book of rates: The latter of which, as being part of the act itſelf, is inſerted in the ſtatutes at large, 11 *G.* *c.* 7. but the former, altho' it is as neceſſary to be known, yet being no part of the act, is not inſerted therein; but may be found in Mr. *Cay*'s abridgment.

Appointing and ſwearing commiſſioners.

1. When any commiſſion ſhall be iſſued for conſtituting commiſſioners of the cuſtoms, two of them firſt named in the commiſſion ſhall be ſworn before the chancellor, or chief baron of the exchequer, or maſter of the rolls, *for the true and faithful execution, to the beſt of their knowledge and power, of the truſt committed to their charge and inſpection, and that they will not take or receive any re-*

ward or gratuity, directly or indirectly, other than their ſalaries, and what ſhall be allowed them from the crown, or the regular fees eſtabliſhed by law, for any ſervice to be done, in the execution of their employment in the cuſtoms, on any account whatſoever. 6 W. c. 1, ſ. 5.

And every other of the commiſſioners and patent officers, and every of their deputies, clerks, or ſervants, and all other officers who ſhall have any employment in or about the cuſtoms, ſhall at their admiſſion, if it is within the ports of *London*, take the ſaid oath before two commiſſioners; and elſewhere, before two juſtices of the peace in the county, town, or place, where his employment ſhall be; and every perſon not taking ſuch oath, ſhall forfeit his office. *id.*

And the perſons hereby reſpectively authorized to adminſter the oath, ſhall certify the taking thereof, to the next ſeſſions to be held for the county or place where the oath was adminiſtred, to be kept amongſt the records. *id.* ſ. 6.

In what caſes they only can make ſeizures.

2. By the 13 & 14 *C.* 2. *c.* 11. No ſhip or goods ſhall be ſeized as forfeited for unlawful importation or exportation, or non-payment of cuſtoms, but by officers of the cuſtoms. ſ. 15.

But by the 8 *G. c.* 18. Spirituous liquors, *Britiſh* or foreign, and all foreign exciſeable liquors forfeited, together with the caſks or other package, may be ſeized by any officer of the cuſtoms or exciſe, or by ſuch perſons as ſhall be deputed by warrant from the lord treaſurer, or under treaſurer, or by ſpecial commiſſion under the great or privy ſeal, but by no other perſon. ſ. 24.

And by the 33 *G.* 2. *c.* 9. Officers of exciſe as well as thoſe of the cuſtoms, may ſeize all ſhips, veſſels, boats, wherries, pinnaces, barges, or gallies, liable to be forfeited for any of the reaſons contained in any of the acts of 8 *G. c.* 18. 11 *G. c.* 30. 12 *G. c.* 28. hereafter following, and proceed to condemn the ſame as the officers of the cuſtoms may do. ſ. 24.

And the like power is given in other inſtances, by ſpecial acts; as is ſet forth under the ſeveral heads hereafter following reſpectively.

Shipping or landing goods without warrant.

3. If any goods ſhall be laden or taken in from the ſhore, into any barge, hoy, wherry, or boat, to be carried aboard any ſhip outward bound; or laden or taken in out of any ſhip coming in from foreign parts, without a warrant and preſence of an officer of the cuſtoms; ſuch barge, hoy, wherry, or boat ſhall be forfeited; and the warfinger offending

offending ſhall forfeit 100 l. and the maſter, purſer, boatſwain, or other mariner of any ſhip inward bound, conſenting thereunto, ſhall forfeit the value of the goods ſo unſhipped; half to the king, and half to him that ſhall ſue. 13 & 14 *C.* 2. *c.* 11. *ſ.* 7.

And if any carman, porter, waterman, or other perſon, ſhall aſſiſt in the taking up, landing, ſhipping off, or carrying away, any ſuch goods; ſuch perſon being apprehended by the warrant of any juſtice of the peace, and the ſame being proved by the oath of two witneſſes, the ſaid offender for the firſt offence ſhall by the juſtice be committed to the next gaol, there to remain till he find ſurety of the good behaviour for ſo long time until he be diſcharged by the lord treaſurer, chancellor, under treaſurer, or barons of the exchequer; and for a ſecond offence, he may by any juſtice of the peace as aforeſaid, be committed to the next gaol, there to remain for two months without bail, or until he ſhall pay to the ſheriff 5 l. for the king's uſe, or until he ſhall be diſcharged by the court of exchequer as aforeſaid. *id.*

Power of juſtices in caſe of ſhips, cattle and carriages forfeited.

4. And here, on occaſion of the forfeiture of the boat or veſſel, mentioned in the preceding ſection, it is proper to take notice of a general clauſe in the ſtatute of 8 *G.* *c.* 18. which brings the cognizance not only of the ſaid forfeiture, but alſo of ſeveral others hereafter following, under the juriſdiction of the juſtices of the peace; and conſequently enlarges conſiderably this title relating to the cuſtoms; to wit, In regard that the keeping and maintaining the horſes ſeized, from the time of ſeizure, to the time of condemnation in the court of exchequer, is very chargeable, and the charge of condemning ſuch veſſels, boats, and horſes, is very great; therefore it is enacted, that all ſeizures of veſſels or boats of 15 tons or under, by virtue of any act relating to the cuſtoms, for carrying uncuſtomed or prohibited goods, or for relanding debenture goods; and all ſeizures of horſes, or other cattle, or carriages for carrying ſuch goods, may be heard and determined in ſuch manner as is appointed by the act of 6 *G.* *c.* 21. except as therein excepted; that is to ſay, All ſuch ſeizures may in a ſummary way be determined by two juſtices of the peace reſiding near the place where the ſeizure is made; who ſhall ſummon the party accuſed, and on appearance or default proceed to hear and give judgment, and iſſue warrants for ſale of ſuch as ſhall be by them condemned: whoſe judgment ſhall not be liable to any appeal or certiorari. 8 *G.* *c.* 18. *ſ.* 16.

Juſtices on trial to proceed on the merits.

5. And by the 9 *G.* 2. *c.* 35. In trials of ſeizures, the juſtices ſhall proceed to the merits of the cauſe, without inquiring into the form or manner of ſeizure. *ſ.* 34.

Officer on trial need not prove his commiſſion.

6. And if any queſtion ſhall ariſe, whether any perſon be an officer of the cuſtoms, proof ſhall be admitted, that ſuch perſon was reputed to be, and had acted in ſuch office, and at the time when the matter in controverſy was done, without proving or producing the commiſſion. 11 *G. c.* 30. *ſ.* 32.

Proof to lie on the owner.

7. And if any diſpute ſhall ariſe, whether the cuſtoms have been paid; the proof ſhall lie on the owner, and not on the officer. 12 *G. c.* 28. *ſ.* 8.

Goods relanded after drawback.

8. If any foreign goods ſpecified in any certificate, whereupon any drawback is to be made, or debentures to be made forth for any ſuch drawback, ſhall not be really and *bona fide* ſhipped and exported (danger of the ſeas and enemies excepted), or ſhall be landed again, unleſs in caſe of diſtreſs to ſave the goods from periſhing, which ſhall preſently be made known to the principal officer of the port; then not only all ſuch certificate goods ſhall be forfeited, but alſo the perſon relanding the ſame, or concerned therein, or to whoſe hands they ſhall knowingly come, or by whoſe privity they are relanded, ſhall forfeit double value of the drawback, together with the veſſels, boats, horſes, cattle, and carriages, made uſe of in landing or carrying the ſame; half to the king, and half to him that ſhall inform, ſeize, or ſue in the courts at *Weſtminſter*. 8 *An. c.* 13. *ſ.* 16. But by the clauſe abovementioned, the boats, cattle, and carriages, may be recovered before the juſtices of the peace.

Unſhipping with intent to land.

9. By the 8 *An. c.* 7. If any goods ſhall be unſhipped, with intention to be landed, without paying cuſtoms, or if any prohibited goods ſhall be imported; then not only the ſaid goods ſhall be forfeited, but alſo the perſons aſſiſting or concerned therein, or to whoſe hands they ſhall come, ſhall forfeit treble value, together with the veſſels, boats, horſes, and other cattle, and carriages; half to the king, and half to him that ſhall ſeize or ſue. *ſ.* 17.

Power to ſearch.

10. Any perſon authorized by writ of aſſiſtants out of the exchequer, may take a conſtable or other publick officer near, and in the day time enter any houſe or place, and in caſe of reſiſtance break open doors, cheſts, and other package, there to ſeize, and from thence to bring goods prohibited and uncuſtomed, and ſecure them in the king's warehouſe. 13 & 14 *C.* 2. *c.* 11. *ſ.* 5.

11. If

11. If prohibited or cuſtomable goods ſhall be found by any officer of the cuſtoms, in a bark, hoy, lighter, barge, boat, or wherry on the water; or coming directly from the water ſide, without the preſence of an officer, or if ſuch goods ſhall, on information of a credible perſon, be found in any houſe or place, on ſearch made as by the ſaid ſtatute of 13 & 14 *C.* 2. *c.* 11. ſuch officer may ſtop and put the ſaid goods in the king's warehouſe, until the claimer ſhall make proof before the commiſſioners, if it be in the port of *London*, that the duties have been paid or ſecured, or that the ſame had been bought in a lawful way of trade, and that ſuch perſon verily believes the duties to have been paid, or that the ſaid goods had been compounded for, or condemned in the exchequer, or been otherwiſe delivered by writ of that court, and that the prohibited goods had been compounded for, or condemned, or otherwiſe delivered, as aforeſaid; in which caſe, the goods ſhall be delivered without delay or charge. And if the goods be ſtopped in any other port, the claimer ſhall make the like proof and deliver the ſame to the collector, or in his abſence to one of the other principal officers of the port, which proof ſhall forthwith be tranſmitted to the commiſſioners for their directions touching the delivery of the goods, or for ſeizing the ſame and proſecution. 6 *G.* *c.* 21. *ſ.* 39. Goods paſſing may be ſtopped and ſeized.

Provided ſuch proof be made within ten days; in failure whereof the goods may be ſeized and proſecuted as by the laws againſt the importation of prohibited or uncuſtomed goods. *ſ.* 40.

If on ſuch proſecution, where no application hath been made to the commiſſioners or officers aforeſaid, and not otherwiſe, the property of the goods ſhall be claimed, and the queſtion ſhall ariſe whether the duties were paid, or the goods had been compounded for, or condemned, or otherwiſe delivered by writ out of the exchequer, or bought in a lawful way of trade, the proof ſhall lie on the claimer; and if the claimer recovers his goods, he ſhall have coſts likewiſe, which ſhall be reckoned as a full ſatisfaction for damages. *ſ.* 41.

Where the claimer ſhall make proof, either by oath before a juſtice of the peace, or otherwiſe, to the ſatisfaction of the commiſſioners or officers of the cuſtoms, ſo as to induce them to order a delivery of the goods, and if the owner ſhall receive any damage by ſuch ſtop; he may bring his action for his reaſonable damages. *ſ.* 42.

But the officer, if he pleaſes, may proſecute, notwithſtanding the directions of the commiſſioners; in which caſe

he shall be liable to be sued by the owner for recovery of his goods with full costs; or if the commissioners shall give no directions for delivery of the goods, the owner nevertheless may sue for them with costs and damages. *s.* 43.

Goods taken in at sea.

12. If any foreign goods shall be taken in at sea, or put out of any ship within four leagues from the coast, without payment of the customs and other duties (unless in case of necessity, or for a lawful reason, of which the master shall give immediate notice and make proof, before the chief officer of the customs of the first port where he shall arrive); the same shall be forfeited, and every person aiding or concerned therein shall forfeit treble value; and the vessel into which the same shall be taken, shall be forfeited, not exceeding 100 tons; and the master of the vessel out of which they are taken, shall also forfeit treble value; half to the king, and half to him that shall seize or sue. 9 *G.* 2. *c.* 35. *s.* 23.

Vessel hovering near the coast.

13. Where any vessel, coming from foreign parts, having on board any goods liable to forfeiture by any act now in force on being imported, shall be found at anchor, or hovering within the limits of any port, or within two leagues of the shore; or shall be discovered to have been within the limits of any port, and not proceeding on her voyage, wind and weather permitting, unless in case of unavoidable necessity and distress of weather, of which the master or other person having charge of the vessel shall give notice and make proof before the collector or other chief officer of the customs, immediately after the arrival of the vessel in such port: all such goods, together with the chests, boxes, casks, and other package, or the value thereof, shall be forfeited, whether bulk shall have been broken or not; and the vessel also, with her tackle and furniture, shall be forfeited, provided such vessel doth not exceed the burthen of 50 tons; half the produce, after the sale thereof, (charges deducted,) to be to the king, and half to the officer who shall make the seizure. 5 *G.* 3. *c.* 43. *s.* 38.

Officers may search coasting vessels.

14. Any officer of the customs or excise (producing his warrant or deputation, if required) may go on board any coasting vessel, and search for prohibited and uncustomed goods, and continue on board during the vessel's stay within the limits of the port; and if any person shall obstruct him he shall forfeit 100 l. 9 *G.* 2. *c.* 35. *s.* 29.

Persons lurking within five miles of the coast.

15. On oath made before a justice of the peace, that any person is lurking within five miles of the sea coast or any navigable river, and there is reason to suspect that he waits with

with the intent to be aiding in running of goods, the juſtice may grant his warrant to bring him before him; and if he ſhall not give a ſatisfactory account of himſelf and his employment, or otherwiſe make it appear that he is not concerned in any clandeſtine or unlawful buſineſs, he ſhall be committed to the houſe of correction, to be whipt and kept to hard labour not exceeding one month: And the commiſſioners of the cuſtoms or exciſe ſhall cauſe to be paid to the informer a reward of 20s. for each offender. 9 *G.* 2. *c.* 35. *ſ.* 18.

But if ſuch perſon ſhall deſire time for clearing himſelf, he ſhall not be puniſhed by whipping or other correction, but committed to the common gaol till he ſhall ſo do, or till he find ſecurity not to be guilty of any the ſaid offences. *ſ.* 19.

Buying or receiving run goods.

16. If any perſon ſhall knowingly receive or buy any run goods; he ſhall on conviction (after ſummons) by confeſſion, or oath of one witneſs, before one juſtice where the offence ſhall be committed or the offender ſhall be found, forfeit 20 l. half to the informer, and half to the poor, by diſtreſs; for want of diſtreſs, to be committed to priſon for three months. 8 *G.* *c.* 18. *ſ.* 10.

Concealing run goods.

17. And by the 11 *G.* *c.* 30. If any perſon ſhall harbour, keep, or conceal, or ſuffer to be harboured, kept, or concealed, any prohibited or run goods liable to pay cuſtoms; he ſhall (whether he claim any property in them or not) forfeit the ſame, and treble value, to be recovered and mitigated as by the laws of exciſe, or in the courts at *Weſtminſter*, half to the king, and half to him that ſhall ſue. *ſ.* 16.

Offering to ſale run goods.

18. And if any perſon ſhall offer to ſale any prohibited goods, or which have been, or are by him pretended to have been run; the ſame, together with the package ſhall be forfeited, and be ſeized by the party to whom they are offered to ſale, or by any officer of the cuſtoms or exciſe. Provided that if the ſeizure is within the bills of mortality, then within 24 hours, if elſewhere within 48 hours, they be put into the king's warehouſe near the place of ſeizure, and if it be far from any ſuch warehouſe, then in ſome exciſe office near. 11 *G.* *c.* 30. *ſ.* 18.

And the perſon offering them to ſale, ſhall alſo forfeit treble value. *ſ.* 19.

And the ſaid goods, if ſold, may be ſeized (with the package) from the buyer, either by the ſeller or any ſuch officer. *ſ.* 20.

And the buyer ſhall alſo forfeit treble value. But both buyer and ſeller ſhall not be proſecuted for the ſame goods, but whether of them ſhall firſt proſecute the other ſhall be diſcharged; but if proſecution ſhall not be commenced in a month, the warehouſe keeper may proſecute. *ſ.* 21.

Which ſaid forfeitures ſhall be recovered and mitigated as by the laws of exciſe, or in the courts at *Weſtminſter*; half to the king, and half to him that ſhall ſue. *ſ.* 39.

Porter carrying run goods.

19. All porters, and others, knowingly carrying run or prohibited goods, and who ſhall be convicted thereof (on appearance or default) on the oath of one witneſs, or confeſſion, before one juſtice where the offence ſhall be committed, or the offender found, ſhall forfeit treble value, half to the informer, and half to the poor, to be levied by diſtreſs by warrant of ſuch juſtice, and for want of diſtreſs to be committed to the houſe of correction, to be whipt and kept to hard labour not exceeding three months. 9 *G.* 2. *c.* 35. *ſ.* 21.

Perſons armed or diſguiſed carrying run goods.

20. Perſons paſſing with foreign goods landed without entry, within 20 miles of the coſt, if they be more than five in number, or armed, or diſguiſed, or who ſhall forcibly reſiſt the officers of the cuſtoms or exciſe in ſeizing run goods, ſhall be guilty of felony, and tranſported for ſeven years. 8 *G.* *c.* 18. *ſ.* 6.

But if any offender ſhall in two months after his offence and before conviction, diſcover his accomplices, ſo as two or more be convicted; he ſhall have a reward of 40l. if the value of the run goods exceeds 50l. and ſhall be acquitted. *ſ.* 7.

And any other perſon diſcovering any one offender, in three months, ſo as he be convicted, ſhall have in like manner 40l. over and above what he may be intitled to on account of the ſaid run goods. *ſ.* 8.

And by the 9 *G.* 2. *c.* 35. Perſons being two or more in company, who ſhall be found paſſing within five miles from the coſt, or from any navigable river, with one or more horſes, or with any cart or carriage, whereon there ſhall be laden more than ſix pounds of tea, or ſpirituous liquors exceeding five gallons, not having paid the duties, and not having a permit, or any other foreign goods of above 30l. value, landed without entry and payment of duties, and ſhall carry any offenſive arms, or wear any diſguiſe, or ſhall forcibly obſtruct, or reſiſt any officer of the cuſtoms or exciſe in ſeizing or ſecuring any prohibited, uncuſtomed, or run goods, or other execution of their office, ſhall be deemed runners of foreign goods, within the meaning of the ſaid act

act of 8 G. c. 18. altho' no proof ſhall be made that ſuch goods were run, or had not been entred and paid duty; but the proof of ſuch entry and payment, and how they came by the goods, ſhall lie on ſuch perſons: and every perſon convicted of any ſuch offence, ſhall be guilty of felony, and tranſported for ſeven years. ſ. 13.

And all the goods ſo found, weapons, horſes, cattle, carriages, and their furniture, cheſts, bags, caſks, and other package ſhall be forfeited. ſ. 14.

And if any officer or other perſon ſhall loſe any limb, or be otherwiſe maimed or dangerouſly wounded by any offender laſt mentioned, or in endeavouring to apprehend him, he ſhall on the conviction of ſuch offender have a reward of 50l. over and above any other reward he may be intitled to by this act. ſ. 15.

And if any perſon be killed in endeavouring to apprehend ſuch offender, his executors or adminiſtrators (on certificate under hand and ſeal of the judge of aſſize for the county where the fact was done, or of the two next juſtices of the peace, of ſuch perſon being ſo killed) ſhall have 50l. over and above any other reward they may be intitled to by this act. ſ. 15.

And if any perſon ſhall, in three months after ſuch laſt mentioned offence committed, diſcover to the commiſſioners of the cuſtoms or exciſe, any offender ſo as he be convicted; he ſhall have 50l. over and above any other reward he may be intitled to by any law. ſ. 16.

And the commiſſioners of the cuſtoms or exciſe ſhall cauſe the rewards to be paid out of the ſaid revenues, on producing a certificate under the hand of the judge certifying the conviction, or on producing ſuch certificate of the perſon being killed: and if any diſpute ſhall ariſe between the perſons intitled to the reward, the ſame ſhall be adjuſted by the commiſſioners. ſ. 17.

Apprehending riotous ſmugglers.

21. And upon information on oath before a juſtice of the peace, that any perſons, to the number of three or more, are or have been aſſembled, to be aiding in the clandeſtine running, landing, or carrying away prohibited and uncuſtomed goods, or to reſcue them after ſeizure, and armed with fire arms or other offenſive weapons; he ſhall grant his warrant to the conſtables and other peace officers, requiring them to take to their aſſiſtance as many as may be thought neceſſary for apprehending ſuch perſons: and he may, if on examination he find cauſe, commit them to the next county gaol, there to remain without bail or mainprize, until they be diſcharged by due courſe of law:

and

and ſuch perſons, on conviction of their being aſſembled and armed as aforeſaid, ſhall be adjudged guilty of felony, and tranſported for ſeven years. 9 *G.* 2. *c.* 35. *ſ.* 10.

And the apprehender for every perſon convicted ſhall have a reward of 50 l. immediately after conviction and demand made, tendring a certificate under the hand of the judge, certifying the conviction, and that he was taken by the perſon claiming the reward, *ſ.* 11.

And if any perſon ſhall loſe a limb, be maimed or dangerouſly wounded, in apprehending or endeavouring to apprehend, or purſuing ſuch offender; he ſhall on ſuch conviction have a reward of 50 l. over and above any other reward that he ſhall be intitled to by this act. *ſ.* 11.

And if any perſon ſhall be killed in taking, or endeavouring to take ſuch offender; his executors or adminiſtrators (on certificate under the hand and ſeal of the judge of aſſize of the county where the fact was done, or of the two next juſtices of the peace, of ſuch perſon being ſo killed) ſhall have a reward of 50 l. over and above any other reward they may be intitled to by this act. *ſ.* 11.

And if any offender ſhall in three months after his offence, and before his conviction, diſcover two or more accomplices, to the commiſſioners of the cuſtoms or exciſe, ſo as two be convicted; he ſhall have 50 l. for every perſon ſo convicted, and be diſcharged of his offence. *ſ.* 12.

The ſaid rewards to be paid as in the laſt ſection.

Outlawed ſmugglers.

22. By the 19 *G.* 2. *c.* 34. If any perſons, to the number of three or more, armed with fire arms or other offenſive weapons, ſhall be aſſembled in order to aſſiſt in the exportation of goods prohibited to be exported, or in running any prohibited or uncuſtomed goods, or goods liable to pay duties which have not been paid, or in relanding goods after drawback, or in reſcuing the ſame after ſeizure, or in reſcuing any perſon apprehended for any offence made felony by any act relating to the cuſtoms or exciſe, or in preventing his being apprehended; or if any perſon ſhall have his face blacked, or wear any diſguiſe, when paſſing with ſuch goods; or ſhall forcibly hinder or aſſault any officer in the ſeizing ſuch goods, or dangerouſly wound any officer attempting to go on board any veſſel, or ſhoot at or wound him when on board; he ſhall be guilty of felony without benefit of clergy. *ſ.* 1.

And perſons charged with any the ſaid offences, before a juſtice of the peace, by information on oath of one or more credible perſons to be ſubſcribed by him or them, the juſtice ſhall forthwith certify the ſame under his hand and

ſeal,

ſeal, and return the information to one of the ſecretaries of ſtate, who ſhall lay the ſame before the king in council; who may thereon make his order, commanding the offender to ſurrender in 40 days after the firſt publication thereof in the gazette, to the lord chief juſtice, or any other of the juſtices of the king's bench, or to ſome juſtice of the peace, who thereon ſhall commit him to gaol, to anſwer the charge againſt him according to due courſe of law: Which order the clerks of the privy council ſhall cauſe to be forthwith publiſhed in the two ſucceſſive gazettes, and to be tranſmitted to the ſheriff where the offence was committed; who ſhall in 14 days cauſe the ſame to be proclaimed between ten in the morning and two in the afternoon, in the market places, on the market days of two market towns in the ſame county, near the place where the offence was committed; and a copy of the order ſhall be affixed on ſome publick place in the ſaid towns: And if ſuch offender ſhall not ſurrender purſuant to ſuch order, or eſcape after ſurrender, he ſhall be attainted of felony without benefit of clergy. *ſ.* 2.

And if any perſon after the time appointed for ſurrender, ſhall knowingly harbour ſuch offender; he ſhall, on conviction within one year, be guilty of felony, and tranſported for ſeven years. *ſ.* 3.

And every perſon who ſhall take, or diſcover ſo that he may be taken, any perſon ſo advertiſed and not ſurrendring, and cauſe him to be brought before a judge of the king's bench, or juſtice of the peace for *London* or *Middleſex* (who ſhall commit him to *Newgate*), ſhall receive 500 l. in one month after execution awarded, from the commiſſioners of the cuſtoms or exciſe reſpectively: And if an offender, againſt whom no ſuch order in council ſhall have been made, ſhall himſelf ſo diſcover or apprehend any other againſt whom an order hath been made; he ſhall be acquitted of all his own offences for which no proſecution is then commenced, and ſhall alſo have his ſhare of the premium: And if any perſon ſhall be maimed or grievouſly wounded in apprehending ſuch offender; he ſhall receive 50 l. over and above ſuch other reward as he may have as apprehender: And if any perſon ſhall be killed in apprehending, his executors or adminiſtrators ſhall receive 100 l. *ſ.* 10.

But nothing herein ſhall prevent miniſters of juſtice from taking ſuch offender by the ordinary courſe of law; but if he ſhall be taken before the expiration of the time limited for his ſurrender, no further proceedings ſhall be

had

had upon the order made in council, but the offender shall be brought to trial by due course of law. *s.* 4.

And if any offender, before order for his surrender, shall discover two or more accomplices, so as they be convicted; he shall receive 50 l. for each, and be discharged of all offences for which no prosecution shall be then commenced. *s.* 11.

In the case of *John Harvey*, *E.* 20 *G.* 2. The attorney general, suggesting the several particulars to have been complied with as in this act specified, prayed that execution might be awarded according to the said act. The defendant traversed all the facts contained in the suggestion. On which, at another day, the attorney general went into the proof of the several issues.—The several facts touching the laying the information before the justice (Mr. *Burdus*) against the prisoner and others; his certifying it in due manner to the duke of *Newcastle*, secretary of state; the duke's laying it before the king in council; the order of council (which was produced under the seal of the council) requiring the prisoner and others to surrender within 40 days after publication in the *London* gazette; the transmitting this order to the printer of the gazette; the publication of it in due time in two successive gazettes; and the transmitting it to the sheriff of the county of *Suffolk*, in order to its being proclaimed and published as the act directeth,—were well proved. Then the under-sheriff of *Suffolk* and other witnesses were called, to prove the proclaiming and fixing up the order in two markets towns near *Beauacre*, the place where the fact is charged in the information taken by Mr. *Burdus* to have been committed. And it appeared on their evidence, that it was proclaimed and fixed up at *Ipswich*, which is 30 miles from *Beauacre*; at *Hadley*, which is 42 miles from *Beauacre*; and at *Leostoff*, which is 5 miles from *Beauacre*; and at no other places: and that there are five or six market towns nearer to *Beauacre* than *Ipswich*; particularly *Southwold* 5, and *Beacles* 8 miles.—Mr. *Ford* assigned counsel for the prisoner, insisted that the act had not been complied with. The act indeed doth not say that it shall be in the *next* market towns, but still it must be in the market towns *near* the place. And the distance of 30 miles cannot with any propriety be called *near*, when it appeareth, that there are at least three market towns within a third part of that distance.—And of this opinion was the court. This, they said, is a very penal law. And it would be of dangerous consequence

quence to give the ſheriff a greater latitude, then the legiſlature intended to give him. Some latitude it did intend to give, and therefore did not confine him to the *next* market towns, becauſe that would have rendered the execution of the act difficult, and ſubject to great niceties. But the law did not intend to leave the matter wholly to the diſcretion of the ſheriff, and therefore it requireth that it be done in the market towns *near* the place. This word is plainly reſtrictive of the ſheriff's power. It is a guide to his diſcretion in the execution of the act. And what doth it mean? Not ſurely the moſt remote town; nor doth it mean a town comparatively remote, as it is plain from the evidence, *Hadly* and *Ipſwich* are.——On the whole; the court without ſumming up the evidence, directed the jury to find for the king, on all the iſſues, except thoſe which regarded the proclamations in the market towns near *Beauacre*; and on thoſe to find for the priſoner, which they did. And then the court ordered, that the attorney general take nothing by his prayer. And that the priſoner be remanded to *Newgate*, in order to anſwer for the original offence he ſtands charged with in the information taken by Mr. *Burdus*, if the attorney general ſhall think fit to indict him for it. *Foſt.* 51.

Officers may oppoſe force with force.

23. If any perſons paſſing in a publick and avowed manner, with prohibited or uncuſtomed goods, and armed with piſtols, guns, cutlaſſes, or other offenſive weapons, ſhall moleſt or reſiſt the officers of the cuſtoms or exciſe, endeavouring to ſeize the ſame, by beating, maiming, or wounding them, or any perſon aſſiſting them; they may oppoſe force with force: And if any perſon ſo reſiſting the officers be wounded, maimed, or killed; ſuch officers, or perſons aſſiſting them in their defence, may plead the general iſſue, and give this act and the ſpecial matter in evidence; and all juſtices of the peace, and others, before whom they ſhall be brought, ſhall admit them to bail. 9 *G.* 2. *c.* 35. *ſ.* 35.

Dangerouſly hurting an officer, finable.

24. By the 13 & 14 *C.* 2. *c.* 11. Where any officer or officers of the cuſtoms ſhall be by any perſon armed with club or any manner of weapon, forcibly hindred, affronted, abuſed, beaten, or wounded, to the hazard of their lives, either on board any ſhip, or on the land or water in execution of their office; every perſon ſo abuſing any ſuch officer or his deputy, or ſuch as ſhall act in his aid or aſſiſtance, ſhall by the next juſtice or other magiſtrate be committed to priſon to the next quarter ſeſſions; and the ſaid ſeſſions ſhall puniſh him by fine; not exceeding 100 l. and the

the offender to remain in prison, till he be discharged by order of the exchequer both of the fine and of the imprisonment, or discover the person that set him on work. *s.* 6.

By eight or more, transportation.

25. And by the 6 *G. c.* 21. If any officer of the customs be forcibly hindred, wounded, or beaten, in the due execution of his office, by any persons armed with any manner of weapon, tumultuously assembled by day or night, to the number of eight or more; the offenders shall be transported for any term not exceeding seven years. *s.* 34, 35.

And if any offender shall in two months after his offence, and before conviction, discover his accomplices so as two be convicted, he shall have 40 l. reward for each, and be acquitted. *s.* 36.

And if any other person shall in three months discover any offender so as he be convicted, he shall have 40 l. over and above any other reward on account of the run goods. *s.* 37.

The same to be paid by the receiver general, or cashier of the customs, on producing the judge's certificate. *s.* 38.

Opposed on shipboard, transportation.

26. And by the 9 *G.* 2. *c.* 35. more generally it is enacted, that if any officer of the customs or excise, being on board any ship, be forcibly hindred, wounded, or beaten, in execution of his office, either by day or night; the offender shall be transported for seven years. *s.* 28.

Hundred shall answer damages

27. And by the 19 *G.* 2. *c.* 34. *s.* 6. If any officer or other person employed in seizing any goods forfeited for being prohibited or uncustomed, or for not having paid duty, or by virtue of any law to prevent the exportation of goods, or in endeavouring to apprehend offenders against this act, shall be beaten or killed, or the goods seized be rescued; the hundred shall answer damages, and also pay 100 l. to the executors or administrators of such person killed, so as the sum for beating exceed not 40 l. nor for the loss of goods 200 l. to be recovered and levied as in cases of robbery by the 8 *G.* 2.

But no person shall recover damages for such beating or loss of goods, unless he give notice in four days to two inhabitants near, and in eight days make oath before a justice, whether he knew any of the persons concerned, and if he did, he shall be bound over to prosecute; and unless, besides the said notice and recognizance, he give such also as persons robbed by the 8 *G.* 2 are directed to give. *id. s.* 7.

And where the offender shall be convicted in six months, the hundred shall not be liable. *s.* 8.

Also

Alſo the action againſt the hundred muſt be commenced within a year. *ſ.* 9.

28. If any action ſhall be brought for any thing done in purſuance of any act relating to the cuſtoms, exciſe, or ſalt duties; the defendant, if the plaintiff fails in his ſuit, ſhall have treble coſts. 5 *G.* 3. *c.* 43. *ſ.* 47. Treble Coſts.

29. Offences relating to the cuſtoms or exciſe, made felony by any act, may be tried in any county; but the attainder ſhall work no corruption of blood, loſs of dower or forfeiture of lands. 19 *G.* 2. *c.* 34. *ſ.* 5. Felonies in relation to the cuſtoms may be tried in any county.

30. By the 5 *G.* 3. *c.* 43. To prevent colluſive agreements between the officers and importers; if any officer of the cuſtoms or exciſe, or other perſon authorized to make ſeizures, ſhall ſeize any goods as forfeited by this act, or any tea, foreign brandy, arrack, rum, ſtrong waters, or ſpirits, as forfeited by the 9 *G.* 2. *c.* 35. on board any ſhip or veſſel, and ſhall not ſeize and proſecute the ſhip or veſſel; or if any ſuch officer ſhall ſeize any goods whatſoever, which ſhall have been unſhipped, landed, removed, or carried contrary to law, and ſhall not alſo ſeize and proſecute the boat, veſſel, cart, horſe, or other cattle, or carriage made uſe of in removing the ſame; and ſhall not diſcover to the commiſſioners of the cuſtoms or exciſe the perſons concerned in unſhipping or receiving ſuch goods, ſo that they may be proſecuted: ſuch officer ſhall, inſtead of the moiety, have only one third of the net produce ariſing by the ſale of ſuch goods, and the remaining two thirds ſhall be to the king. *ſ.* 39. Colluſive ſeizures.

31. By the 5 *G.* 3. *c.* 39. Power is given to the officers of the cuſtoms and exciſe, to viſit and ſearch ſhips and veſſels, in any harbour or other place belonging to the iſle of *Man*, and ſeize contraband goods there, as they may do in Great Britain. *ſ.* 1. Iſle of Man, as to cuſtoms.

And no wrought ſilks, bengals and ſtuffs mixed with ſilk or herba, of the manufacture of *Perſia*, *China*, or *Eaſt India*, nor callicoes painted or ſtained in any of thoſe places, nor any cambricks or *French* lawns, ſhall be exported to the ſaid iſland; on pain of ſeizure by the officers of the cuſtoms, and forfeiture thereof, and of the goods contained in the ſame package therewith. *ſ.* 2.

And the iſle of *Man* ſhall be added to and included in the bond which is now by law required to be given, that ſuch goods ſhall be duly exported, and not relanded in any part of Great Britain. *ſ.* 3.

And no foreign ſpirits ſhall be imported into the ſaid iſland, but only ſuch as ſhall be *bona fide* laiden and ſhipped

ped in Great Britain, and carried thither directly from thence; on pain of forfeiture of such goods, or the value thereof, together with the vessel and furniture. *s.* 4.

And no spirits shall be shipped in *America*, but on condition that the same shall not be landed in the said island. *s.* 5.

And no foreign spirits shall be exported from the said island, or carried coastwise, in any ship less than 100 tuns burden, nor in any cask under 60 gallons; (except for the use of the seamen, not exceeding two gallons each); and no wine shall be there imported, or exported, or carried coastwise, in any ship less than 100 tuns burden, nor in any cask less than 25 gallons; on pain of forfeiture of the goods, together with the vessel and furniture. *s.* 6.

And vessels found hovering on the coast, or within three leagues thereof, having prohibited goods on board, (unless in case of necessity by distress of weather,) shall be forfeited, with the tackle and furniture, together with the said goods. *s.* 7.

And no spirits shall be imported from thence into Great Britain, upon any pretence whatsoever; and vessels coming from thence, with spirits (except for the use of the seamen, not exceeding two gallons each) or other prohibited goods on board, found hovering on the coasts of Great Britain or Ireland, or within three leagues thereof, (unless in case of necessity by distress of weather,) shall be forfeited, together with such goods. *s.* 8.

And the seizure may be brought into any port in Great Britain, Ireland, or the said island; and prosecuted there respectively, and disposed in all respects, as in case of seizures made in Great Britain. *s.* 9.

By the 5 *G.* 3. *c.* 43. The inhabitants of the said island may import into Great Britain, bestials, or any goods of the produce and manufacture of the said island (except as above excepted, and except woollen manufactures, beer and ale); without paying any duty for the same, other than is paid for the like in Great Britain: Provided, that the person importing the same bring with him a certificate thereof from the proper officer there; and also make oath at the port of importation, that the goods are the same which were taken on board by virtue of the said certificate. *s.* 11.

But this shall not extend to give liberty to import into Great Britain from the said island any goods of the growth

or

or produce of any foreign nation, which may be in part or fully manufactured in the said island; except linen manufactures made there of hemp or flax, not being the produce of the said island. *s.* 12.

And the bounties on exportation of British and Irish linens, shall be allowed on the like species of linen made in the isle of *Man*, imported into and exported from Great Britain. *s.* 13.

Islands of Faro.

32. Whereas tobacco, rum, and other goods are shipped for exportation to the islands of *Faro* (being part of the dominions of the king of Denmark), with no other intent than fraudulently to reland the same; it is enacted, that no drawback or bounty shall be allowed for any goods exported to the said islands; nor shall any cocket or clearance be granted for exporting to the said islands any goods prohibited to be worn or used in Great Britain or Ireland. 5 *G.* 3. *c.* 43. *s.* 31.

And if any goods shall be entred for exportation, and shall be landed in the said islands; the drawback thereon shall be forfeited; and the exporter, and master of the vessel, and every person concerned in exporting or landing the same, shall forfeit treble value; and the vessel also, with the tackle and furniture, shall be forfeited, and may be seized and prosecuted by any officer of the customs or excise; and the penalties and forfeitures may be recovered as any forfeiture incurred by any law of the revenue, and distributed half to the king (after deducting the charges of prosecution), and half to such officer who shall sue. *s.* 32.

And the said islands of *Faro* shall be added to and included in the oath, upon all debentures for goods exported, whereon the exporter is to swear, that such goods are not landed or intended to be landed in Great Britain or Ireland. *s.* 33.

II. Of the excise in general.

Head office, and commissioners.

1. One principal head office of excise shall be kept in *London*, or within ten miles thereof, to which all other offices in the kingdom shall be subordinate and accountable; which said office shall be managed by such commissioners, as the king shall appoint. 12 *C.* 2. *c.* 24. *s.* 46. 5 *W.* *c.* 20. *s.* 16.

Subcommissioners, and other officers.

2. And all places within the bills of mortality shall be under the immediate care and management of the said head office; and such and so many subordinate commissioners,

and ſubcommiſſioners, and other officers ſhall be appointed by the king in other places, as he ſhall think fit. 12 *C.* 2. *c.* 24. *ſ.* 48.

Office when to be kept open.

3. And the exciſe office in all places where it ſhall be appointed, ſhall be kept open from eight in the morning, till two in the afternoon. 23 *G.* 2. *c.* 26. *ſ.* 12.

Office in market towns.

4. And the commiſſioners or ſubcommiſſioners ſhall appoint under their hands and ſeals, ſuch perſons as they ſhall think needful in each maket town, to be there upon every market day, in ſome known and publick place, for receiving entries and duties, and performing all other things touching the revenue of exciſe: And if ſuch office ſhall not be ſo kept in each market town, the commiſſioners or others neglecting or refuſing, ſhall for every market day forfeit 10*l.* And ſuch perſon as ſhall come to ſuch market town to make his entry or payment, and tender the ſame accordingly, and be able to prove ſuch tender by oath of one witneſs, ſhall not be liable to any penalty for ſuch weekly or monthly entries or payments, as ſhould have been made or paid on ſuch market day. 15 *C.* 2. *c.* 11. *ſ.* 10.

Collections, diſtricts, and other diviſions.

5. The kingdom of *England* and *Wales* (excluſive of the bills of mortality) is divided into 49 *collections*; ſome called by the names of particular counties; others by the names of great towns, where one county is divided into ſeveral collections, or where a collection comprehends the contiguous parts of ſeveral counties: Every collection is ſubdivided into *diſtricts*, within each of which there is a *ſupervisor*; and each diſtrict is parcelled into *out rides* and *foot walks*, within each of which there is a *gager* or ſurveying officer. *Gilb. Exch.* Append.

Gagers.

6. The commiſſioners or ſubcommiſſioners, in their reſpective circuits and diviſions, ſhall conſtitute under their hands and ſeals, ſuch and ſo many gagers as they ſhall find needful. 12 *C.* 2. *c.* 24. *ſ.* 33.

In order to which, he who would be made a gager, muſt procure a certificate, that he is above 21, and under 30 years of age; that he underſtands the four firſt rules of arithmetick; that he is of the communion of the church of *England*; how he has been employed, or what buſineſs he hath followed; that he is not incumbered with debts; whether ſingle or married; and if married, how many children he has, for if he has above two, he cannot (by the rules of the office) be admitted. *Gilb. Exch.* App.

He

He muſt alſo nominate two perſons to be his ſureties, and it muſt be certified that they are of ſufficient ability; and that the ſaid certificate is of his own hand writing: Such certificate, written by him, muſt be ſigned by the ſupervisor of exciſe where the party applying lives. *id.*

At the bottom of the certificate muſt be his affidavit, that neither he, nor any elſe to his knowledge, hath directly or indirectly, given or promiſed to give, any treat, fee, gratuity, or reward, for his obtaining or endeavouring to obtain an order for his being inſtructed. *id.*

When an order for inſtruction is granted, it is directed to an experienced officer, who receives ſuch perſon as his pupil; and the like books as officers have, being delivered to ſuch pupil, he goes with and attends the officer who inſtructs him, and takes ſurveys, and in his own books makes the like entries as if he was an officer, until the inſtructor certifices that he is fully inſtructed. *id.*

After he is thus certified for, and until he is employed, he is called an *expectant*, being to wait till a vacancy happens. *id.*

Officer's oath.

7. No perſon ſhall be capable of intermeddling with any office relating to the exciſe, until he ſhall before two juſtices in the county where his employment ſhall be, or before a baron of the exchequer, take the oaths of allegiance and ſupremacy, together with this oath following;

You ſhall ſwear to execute the office of ——— truly and faithfully, without favour or affection, and ſhall from time to time true account make and deliver to ſuch perſon or perſons as his majeſty ſhall appoint to receive the ſame, and ſhall take no fee or reward for the execution of the ſaid office, from any other perſon than from his majeſty, or thoſe whom his majeſty ſhall appoint in that behalf. 12 C. 2. c. 24. ſ. 47.

And the juſtices ſhall certify the taking of ſuch oath, to the next quarter ſeſſions, there to be recorded. *ſ.* 48.

And the officer ſhall alſo enter a certificate thereof with the auditor of the exciſe: And if any ſuch perſon ſhall act before he hath taken the ſaid oaths, and entered his certificate with the auditor aforeſaid, he ſhall forfeit 50 *l.* a month. 15 *C.* 2. *c.* 11. *ſ.* 27.

And he ſhall alſo, within ſix months after his admiſſion to the office, take the oaths and ſubſcribe the declaration againſt tranſubſtantiation, at the quarter-ſeſſions; in like manner as other perſons admitted to offices.

Officers general duty.

8. The buſineſs of the *ſupervisor* is to be continually ſurveying the houſes and places of the perſons within his diſtrict liable to duties; and to obſerve and ſee whether the

officers duly make their ſurveys, and make due entries thereof in their books and in the ſpecimen papers; and every ſupervisor is in his own book to enter what himſelf does, each day and part thereof; and alſo ſet down the behaviour good or bad, the diligence or negligence, of the ſeveral officers of his diſtrict; and at the end of every ſix weeks, to draw out a diary of every day's buſineſs, and of the remarks made each day of the ſeveral officers in his diſtrict, and to tranſmit ſuch diary at the end of every ſix weeks to the chief office. *Gilb. Exch.* Append.

Each commiſſioner takes and peruſes a proportion of theſe diaries, and when he meets with any remarkable complaint againſt any officer, he communicates it to the reſt; who thereupon come to an agreement, either to *admoniſh*, *reprimand*, *reduce*, or *diſcharge*. For ſmall faults, officers are admoniſhed; for great ones, reprimanded; for greater, reduced; but for the greateſt, they are diſcharged. The commiſſioner who peruſes the diary, writes in the margin, admoniſh, reprimand, or as the caſe is. *id.*

Theſe diaries, after having been thus written upon, are delivered to the clerk of the diaries, who in a book, called the reprimand book, places the admonitions, reprimands, and the like, to each officer's account, and writes every offender word thereof. Which reprimand book is reſorted to, upon diſcovering new faults; and if it is there found, that the officer has before been admoniſhed and reprimanded ſo often, that there are no hopes of his amending, he is then diſcharged. The ſaid book is likewiſe reſorted to, when application is made for advancing or preferring an officer into a better poſt. Frequent admonitions or reprimands are a bar to preferment, unleſs they are of old ſtanding; but if for three years laſt he ſtands pretty clear of admonitions and reprimands, thoſe of elder date are not much regarded. *id.*

The *collector*'s buſineſs is, every ſix weeks to go his rounds; and in the intervals of rounds, he is to be aſſiſting in proſecuting offenders before the juſtices; he is alſo to peruſe the ſupervisor's diaries, and where he finds an officer complained of, is to examine him and the ſupervisor, and having heard both, is in the margin to write his opinion of each fact; he is alſo to have an eye how the ſupervisors and officers of his collection perform their duties; and from the vouchers he tranſcribes into his book the charge on each particular perſon in his collection. *id.*

For faults, gagers are *reduced*, either to be only aſſiſtants, or from foot walks to out rides; ſupervisors are reduced to be again only gagers; and collectors are reduced to be ſupervisors. *id.*

In

In some instances, discharged officers, after having for a competent time been thereby kept out of pay, are again restored; but if twice discharged, are never again restored, unless one of the discharges appears to have been occasioned by a misrepresentation of the case. *id.*

Penalties by the excise laws.

9. In the act of the 24 *G.* 2. *c.* 40. There is a general clause, which has a controlling influence on all that hereafter follows in this large title; which is this: *All fines, penalties, and forfeitures, imposed by this or any other act relating to the duties of excise, or other duties under the management of the commissioners of excise, shall be sued for, levied, recovered, or mitigated by such ways and means, as any fine, penalty, or forfeiture is or may be recovered or mitigated by any law or laws of excise, or in the courts at* Westminster, *and shall be half to the king, and half to him that shall inform or sue.* s. 33.

By two justices.

10. That is to say, *If it is within the limits of the chief office in* London, *the offences shall be determined by the commissioners (or any three of them,* 1 G. 2. st. 2. c. 16. s. 4, 5.) *or, in case of appeals, by the commissioners of appeals: in all other places, they shall be heard and determined by any two or more justices of the peace, residing near to the place where such forfeitures shall be made, or offence committed: And in case of neglect or refusal of such justices by the space of* 14 *days next after complaint made, and notice thereof given to the offender; then the subcommissioners may hear and determine the same; And if the party find himself aggrieved by the judgment given by the said subcommissioners, he may appeal to the next quarter sessions, whose judgment therein shall be final. Which said commissioners for appeals, and chief commissioners for excise, and all justices of the peace, and subcommissioners aforesaid, are required upon any complaint or information exhibited and brought, of any such forfeiture made or offence committed, to summon the party accused, and upon his appearance or contempt to proceed to the examination of the Fact, and on due proof made thereof, either by the voluntary confession of the party, or by the oath of one credible witness, to give judgment or sentence, and to issue warrants under their hands, for levying the same on the goods and chattels of the offender, and to cause sale to be made thereof, if not redeemed in* 14 *days; and for want of sufficient distress, to imprison the party offending till satisfaction be made.* 12 C. 2. c. 24. s. 45.

Residing near] Mr. *Shaw* who seems to have taken some pains on this article (and after whom Mr. *Barlow* hath copied without owning it) saith hereupon, that

where the *next* justices are impowered to proceed in any matter, they and no other ought in such case to act; but where it is only directed, that the justices residing *near* shall do such a thing, those words are not restrictive, but only directory, and any justices, altho' not the *next* justices, may proceed therein. *Shaw* Exc.

But where the act says, that *any two justices residing near* to the place where the forfeiture shall be made, or the offence committed, shall hear and determine the matter, it doth not intend that the justices of a county at large dwelling near to a town corporate, which hath justices of its own, and an exclusive charter, shall have power to intermeddle with regard to offences committed within such town corporate; but only to vest the jurisdiction in justices of counties, cities, and places, with respect to their local jurisdictions within such places. *T.* 14 *G.* 2. *Talbot* and *Hubble*, Str. 1154.

Upon any complaint or information exhibited] By these words it is not necessary that the information be exhibited *in writing*; but if it is a verbal information, the justices ought to make a record thereof, and of the time and place, when and where exhibited, which must be expressed in the present, and not in the time past: But to save the justices that trouble, it is usual for the informer to prepare his information in writing; and by way of preface thereto, to make a memorandum of the time and place of the laying such information, leaving therein blanks for the names of the justices, and the day and month and year and place when and where laid; and when those blanks are filled up by direction or consent of the justices, then it becomes a record made by them. The mentioning the place where the information is laid, is, that it may appear that the prosecution was in the proper county; and therefore though it may happen, that for laying the information, the prosecutor may be obliged to attend one justice in one town, and another justice in another town, it must not be mentioned, that the information was laid at both towns, for that would be absurd; but in such cases it is usual to express that the information is laid at the town where the hearing is intended to be. *Shaw* Exc.

Proceed to the examination of the fact] And by the 9 *G.* 2. *c.* 35. it is enacted, that in trials of seizures, the justices shall proceed to the merits of the cause, without inquiring into the form or manner of seizure. *s.* 34.

Give

Give judgment] Altho' it hath been ſaid, that whatever is recorded by the juſtices or their order, ought to be expreſſed in words of the preſent time and tenſe; yet that doth not make it neceſſary, nor is it indeed practicable, that all that is to be ſo entered ſhould actually be entred at the inſtant of time when ſuch judgment is given; for ſuch entring the whole at that time would hinder the diſpatch of buſineſs, and delay the hearing of cauſes, and therefore may be done at any convenient time after; which if it be agreeable with, and according to ſuch ſhort minutes or notes as are then taken by ſuch juſtices, it will be as authentick as if it had been entred at the inſtant of time in which ſuch order was made, or judgment was given. *Shaw* Exc.

And to iſſue warrants under their hands] Altho' it is here only directed, that the warrant ſhall be under the *hands* of the juſtices; yet ſince it is generally implied in all warrants, that they be both under *hand* and *ſeal*, it is ſafe at leaſt, if not neceſſary, that this warrant alſo amongſt the reſt, be both *ſigned* and *ſealed*.

For levying the ſame on the goods and chattels of the offender] And in caſe where the offender ſhall remove out of the juriſdiction, it is enacted by the 18 *G.* 2. *c.* 26. *ſ.* 13. and 5 *G.* 3. *c.* 43. *ſ.* 26. that the commiſſioners and juſtices, reſpectively within whoſe juriſdiction any perſon charged by any act concerning the duties of exciſe, or any other duties under the management of the commiſſioners of exciſe, or who hath committed any offence againſt any of the ſaid acts, ſhall be found, may ſummon, hear, adjudge, and determine, and iſſue any proceſs or warrant, in the ſame manner as before they might have done in caſe of ſuch offences committed within their juriſdiction; and if they ſhall, upon any judgment given by them, iſſue a warrant of diſtreſs, and the perſon authorized to execute the warrant ſhall make a return thereto that no ſufficient diſtreſs can be found, it ſhall be lawful for the ſaid commiſſioners and juſtices reſpectively, within whoſe juriſdiction the party ſhall at any time be found, againſt whom ſuch warrant ſhall have been iſſued, upon producing to them ſuch warrant, and return thereof, to commit ſuch offender to the next county gaol till ſatisfaction be made.

And to cauſe ſale to be made thereof if not redeemed in 14 *days*] But by the 27 *G.* 2. *c.* 20. the juſtices may not order the diſtreſs to be detained more than eight days, nor leſs than four.

For

For want of ſufficient diſtreſs] Mr. *Shaw* and Mr. *Barlow* are of opinion, that where there are ſome goods, but not ſufficient for ſatisfying the judgment, yet thoſe goods may be applied for that purpoſe ſo far as they ſhall extend, and the defendant ſhall be impriſoned for the reſidue; which may ſeem hard ſometimes, when the defendant ſhall perhaps ſatisfy nearly the whole ſum, and moreover be impriſoned as much as if he had paid nothing; and it hath been adjudged in other caſes, that a man ſhall not firſt pay part, and then be impriſoned for the reſidue, but ſhall either pay the whole, or be impriſoned for the whole: but perhaps the diſtinction may be this; where there is a limited time of impriſonment, as for inſtance, three months, there the defendant ſhall not pay part, and then be impriſoned the whole three months, which would be to puniſh him both ways; but there the impriſonment is till the penalty ſhall be paid, there the payment of the penalty is the thing chiefly regarded, and the impriſonment is not intended as a puniſhment, but as a mean to compel the payment of the penalty, and if part of it is paid already, the inlargement may come the ſooner, by payment of the reſidue.

Impriſon the party till ſatisfaction be made] But before any warrant can be made to arreſt and impriſon the perſon of the defendant, there muſt be firſt a warrant to ſeize the utenſils in cuſtody of ſuch offender, and the offender's goods; and that warrant muſt be returned: all which muſt be done, before any warrant can be regularly made, to arreſt and impriſon the defendant's perſon. Which method ought to be obſerved, tho' perhaps it may be well known by, or ſufficiently proved before the juſtices, that all the utenſils and all the defendant's goods are carried off; for the law being in all caſes very tender of depriving men of their liberty, it is neceſſary that all poſſible means ſhould be uſed to levy the money on ſuch goods, before the perſon of the defendant be impriſoned. But if a warrant to ſeize the utenſils and the goods, be made and delivered to an officer to be executed; and if ſuch officer, having made diligent ſearch, cannot find any ſuch, then a warrant may be made to arreſt and impriſon the perſon of the defendant. But then there ought to be a duplicate made of ſuch warrant; becauſe the keeper of the priſon cannot regularly receive the offender without a warrant, and the officer ought alſo to have and keep a warrant for his own juſtification. *Shaw* Exc.

Summoning witneſſes.

11. By the 7 & 8 *W. c.* 30. The commiſſioners and juſtices may ſummon witneſſes, to appear before them at a certain

certain day, time, and place, to be inserted in such summons, and to give evidence; and in case of neglect or refusal to appear, or if upon appearance any shall refuse to give evidence, he shall forfeit 10 l. *s.* 24.

And a summons left at the house or usual place of residence, or with the wife, child, or menial servant of the person accused, shall be as effectual, as if delivered to the person himself. 32 *G.* 2. *c.* 17. *s.* 1.

And in all cases relating to the excise, or to any of the duties under the management of the commissioners of excise (except where particular provisions are made for summoning offenders, or for condemning of seizures made from persons unknown); the leaving such summons at the house workhouse, shop, cellar, vault, or usual place of residence of such person, directed to him by his right or assumed name, shall be as effectual as if delivered to him in person, and as if directed to him by his proper name. *s.* 2.

Officer on trial need not produce his commission.

12. If upon trial, any question shall arise, concerning the keeping of any office of excise, or concerning any person's being an officer; proof shall be admitted of the actual keeping of such office, or of such person's actually exercising such office, without proving or porducing the commission. 6 *G.* *c.* 21. *s.* 24. 11 *G.* *c.* 30. *s.* 32.

Proof to lie on the owner.

13. If on trial any dispute shall arise, whether the excise or other inland duties have been paid for any foreign goods seized; the proof shall lie on the owner, and not on the officer. 12 *G.* *c.* 28. *s.* 8.

Sworn values.

14. One or more justices shall have power to administer an oath to any person skilled in the value of goods, vessels, or carriages, mentioned to have been seized in any information exhibited before the justices, to view the same, and make return of the species, quantity and value; and after condemnation, the said goods shall be sold where the commissioners shall think proper. 12 *G.* *c.* 28. *s.* 16.

Mitigation.

15. *The justices, commissioners, or subcommissioners, respectively, where they shall see cause, may mitigate, compound, or lessen the forfeiture, penalty, or fine; so as the same be not made less than double the value of the duty of excise which ought to have been paid, besides the reasonable costs and charges of such officers, or others, as were employed therein, to be to them allowed by the said justices.* 12 C. 2. c. 24. s. 46.

Mitigate] But it is not necessary in the mitigation, to mention or distinguish so much for the offence, and so much for the charges; but after the justices have agreed what sums to allow for the charges, the best way will be

to add those two sums together, and make their mitigation to such sum, as both when added together do amount unto: as suppose the justices do intend, that the defendant shall pay 10 l. for the offence, and 40 s. for the charges, the best way will be to make their mitigation to 12 l. without particularly mentioning that 10 l. thereof is for the offence, and that the 40 s. is for the charges; for in all cases it is wrong to insert in judgments more words or particulars than are necessary; and it is more particularly wrong in these cases, because the mentioning such unnecessary particulars may give a handle for cavils and disputes. *Shaw* Exc.

Costs and charges] Generally the law doth not allow any costs or charges to be recovered on any penal law; and therefore to intitle the prosecutor to costs, over and above the penalty, express words for that purpose are necessary in an act of parliament. *Shaw* Exc. But by the 27 *G.* 2. *c.* 20. the constable out of the money arising from the sale of the distress, may detain his reasonable charges of taking, keeping, and selling the same.

Appeal.

16. There is no appeal directed in the said statute of 12 *C.* 2. from judgments given by the justices of the peace; for whereas it is enacted, in the said statutes, that *if the party find himself aggrieved by the judgment given by the subcommissioners, he may appeal to the next quarter sessions*, these words, not being general, or such as may be applied equally, as well to the judgments given by the justices, as to judgments given by subcommissioners, they must be understood as limited and restrained to such judgments only as are given by subcommissioners, in whom the parliament (it seems) did not so intirely confide as in the justices, but have made the aforementioned distinction between the judgment of the one and of the other; which must be observed and pursued; and therefore, generally, there lies no appeal to the quarter sessions from the judgment given by the justices, in matters relating to the excise. *Shaw* Exc.

Nevertheless in some particular instances, such power is given by subsequent statutes; which will be mentioned under the special heads in this title hereafter following.

By the 15 *C.* 2. *c.* 11. No appeal in any cause of excise shall be admitted, till the appellant hath deposited the single duty with the commissioners or subcommissioners, and given security to the commissioners of appeal, or justices of the peace, where the cause is to be finally adjudged, for such forfeiture as was adjudged against him; and

if

if upon appeal the judgment be reverſed, they ſhall reſtore the duty ſo depoſited, or ſo much thereof as ſhall be adjudged on the appeal, and the party originally proſecuting ſhall pay double coſts; but if the judgment be affirmed the party appealing ſhall pay the like coſts to the commiſſioners. *ſ.* 19.

And by the ſame ſtatute, all differences and appeals about the exciſe, ſhall be heard in the proper county, and not elſewhere. *ſ.* 22.

And by the ſame ſtatute, appeals within *London*, and the limits thereof, ſhall be within two months after judgment, and notice given or left at the dwelling-houſe of the party; in all other places, in four months, and not otherwiſe. *ſ.* 26.

Certiorari.

17. It is generally provided by divers ſtatutes, that no certiorari ſhall be allowed to ſuperſede the juſtices proceedings. 12 *C.* 2. *c.* 24. *ſ.* 50. 22 & 23 *C.* 2. *c.* 5. *ſ.* 14. 6 *G.* *c.* 21. *ſ.* 22.

Treble coſts.

18. Perſons ſued for any thing done or any act relating to the exciſe, or other duties under the management of the commiſſioners of exciſe, may plead the general iſſue; and have treble coſts. 18 *G.* 2. *c.* 26. *ſ.* 15.

Felonies relating to the exciſe where to be tried.

19. Offences relating to the exciſe made felony by any act, may be tried in any county; but the attainder ſhall work no corruption of blood, or forfeiture of lands. 19 *G.* 2. *c.* 34. *ſ.* 5.

Alehouſekeepers harbouring offenders.

20. Any alehouſekeeper harbouring an abſconded perſon, againſt whom a proceſs of arreſt hath iſſued, for any offence againſt the laws of exciſe or of the cuſtoms, after ſix days notice of ſuch abſconding in two ſucceſſive gazettes, and writing fixed on the door of the pariſh church where he laſt dwelt, ſhall forfeit 100 l. and have no licence for the future. 9 *G.* 2. *c.* 35. *ſ.* 30, 31.

Landing foreign exciſeable liquors before duty paid.

21. No foreign liquors, for which exciſe ought to be paid, ſhall be landed, before entry made with the officer or collector of exciſe, or before the exciſe ſhall be paid: and every warrant from any officer of the cuſtoms, for landing ſuch foreign liquors, ſhall be ſigned by the officer or collector of exciſe in the port; on pain that the liquors landed otherwiſe, or the value thereof, ſhall be forfeited, to be recovered of the importer or proprietor. 22 & 23 *C.* 2. *c.* 5. *ſ.* 9.

Exciſeable liquors carried coaſtwiſe.

22. No perſon bringing any exciſeable liquors (except beer, ale, cyder, perry, and metheglin) into any place by coaſt cocquet, tranſire, or certificate, nor any perſon to whom the ſame ſhall be conſigned, ſhall land the ſame, without being entred with the officer of exciſe where landed; on pain of double value. 15 *C.* 2. *c.* 11. *ſ.* 18.

23. If

Concealing exciseable goods.

23. If any person shall conceal, or suffer to be concealed, any goods liable to the duties of excise, and inland duties; he shall (whether he claims any interest in them or not) forfeit the same, and treble value. 11 *G. c.* 30. *s.* 16.

Constable to be assisting.

24. If on request made by any officer of excise, to a constable to go along with him, and to be present at the doing of any thing, at the doing whereof his presence shall he necessary by any statute, he shall neglect or refuse or shall not go along with him, and be present at the doing thereof; he shall forfeit 20 l. 11 *G. c.* 30. *s.* 31.

Obstructing officer.

25. If any person shall oppose, molest, hinder, or obstruct any officer of excise, in the due execution of the powers given him by any act relating to the duties of excise; he shall forfeit 10 l. 6 *G. c.* 21. *s.* 7.

And actions of assault upon any officer of excise, may be tried in any county. 9 *G.* 2. *c.* 35. *s.* 26.

Further penalties for obstructing, wounding, or killing officers, in the case of run goods, have been inserted before, in treating of the customs.

Officer not to be a dealer.

26. If any officer of the excise or customs shall deal in coffee, tea, brandy, or other exciseable liquors; he shall be incapable to hold any office in the revenue, and forfeit 50 l. 12 *G. c.* 28. *s.* 7.

Officer taking a bribe.

27. No sworn gager, or other officer, shall take any bribe, for any matter relating to the excise; on pain of 10 l. 15 *C.* 2. *c.* 11. *s.* 16.

And a further penalty upon such officer is inflicted, in divers instances hereafter mentioned.

And by the 11 *G. c.* 30. If any person liable to the duties of excise, or any other duties under the management of the commissioners of excise, shall give or offer to any officer of the said duties any bribe, gratuity, or reward, in order to induce him to omit his duty, or to do contrary to it; he shall forfeit 500 l. *s.* 40.

Officer meddling in elections.

28. No collector, supervisor, gager, or other person concerned in charging, collecting, levying, or managing the duties of excise, or any part thereof, shall by word, message, or writing, or in any other manner, endeavour to persuade any elector to give, or dissuade any elector from giving, his vote for the choice of a member of parliament; on pain of 100 l. half to the poor, and half to him who shall sue in the courts at *Westminster*; and moreover he shall be incapable to hold any office of trust under the king. 5 *W. c.* 20. *s.* 48.

III. Of the ſeveral goods in particular, under the management of the commiſſioners of the cuſtoms and exciſe: *viz.*

Ale, beer, cyder, perry, mum, metheglin, mead, ſweets, verjuice, and vinegar; candles; coaches; coffee, tea, and chocalate; glaſs; hops; leather; linen cloth and ſilks; malt; paper; plate; ſalt; ſoap; ſpirituous liquors; ſtarch and hair powder; wire.

I. Ale, beer, cyder, perry, mum, metheglin, mead, ſweets, verjuice, vinegar.

Duty on ale and beer imported.

1. By the ſeveral acts relating to that purpoſe, there ſhall be paid by the importer before landing, for every barrel of beer or ale imported, in the whole the ſum of 18 *s.*

On home ale and beer.

2. By the ſeveral acts there ſhall be paid in the whole, for every barrel of beer or ale above 6 *s.* a barrel, brewed by the common brewer, or any other perſon who ſhall ſell or tap out beer or ale, the ſum of 8 *s.* and for every barrel of 6 *s.* a barrel or under, the ſum of 1 *s.* 4 *d.*

Duty on cyder and perry imported.

3. For every ton of cyder or perry imported ſhall be paid 22 *l.* 10 *s.* And if they are imported by foreigners, they ſhall pay 30 *s.* more.

Duty on home cyder and perry.

4. By ſix ſeveral acts, for every hogſhead of *cyder* and *Perry* made in Great Britain, and ſold by retail, there ſhall be paid by the retailer the ſum of 6 *s.* 8 *d.* And by the 12 *An. ſt.* 1. *c.* 2. 4 *s.* more, to be paid by the firſt buyer or retailer. And by the 1 *G.* 3. *c.* 3. 4 *s.* more, over and above all other duties payable for cyder and perry ſold by retail. And by the 6 *G.* 3. *c.* 14. 6 *s.* more.

And for every hogſhead which ſhall be ſent or conſigned to any factor or agent, who ſhall receive the ſame to ſell or diſpoſe of, 16 *s.* 8 *d.* to be paid by ſuch factor or agent. 6 *G.* 3 *c.* 14. *ſ.* 4.

And every perſon who ſhall receive into his cuſtody or poſſeſſion any cyder or perry, to be by him ſold or diſpoſed of, ſhall be deemed to be a factor or agent; unleſs he make proof, that ſuch cyder or perry was made from fruit of his own growth, and not from bought fruit; or unleſs it appear by certificate of the officer of exciſe accompanying the ſaid cyder or perry, that the duties have been charged upon the ſame. *ſ.* 5.

Provided,

Provided, that if any cyder or perry ſhall be received by any factor or agent, dealer or retailer, for which it ſhall appear by certificate that the duties have been charged; ſuch perſon ſhall not be charged with the payment of ſuch duties charged as aforeſaid, on receiving ſuch cyder or perry into his ſtock, or on the decreaſe thereof. *ſ.* 6.

Provided alſo, that if any factor or agent ſhall (during the continuance of the preſent malt act) be charged with and pay the duty of 4 *s.* a hogſhead chargeable on him as the receiver thereof; he ſhall ſtand diſcharged of 4 *s.* part of the ſaid 16 *s.* 8 *d.* *ſ.* 7.

And every ſuch factor or agent, taking any cyder or perry into his poſſeſſion, ſhall, three days before he ſhall begin to diſpoſe of the ſame, make entry in writing at the next office of exciſe, of his name, and place where the cyder or perry is to be kept: And if he ſhall make uſe of any warehouſe or other place, without having made ſuch entry; he ſhall forfeit 50 *l.* And every ſuch factor or agent ſhall be liable to all the regulations, which any dealer in or retailer of cyder and perry is liable to by this or any other act now in force, for managing the duties on cyder and perry. *ſ.* 9.

And for every hogſhead of cyder and perry, which ſhall be made and ſold in Great Britain, by any dealer in or retailer thereof, from fruit of his own growth, ſhall be paid a duty of 6 *s.* by ſuch dealer or retailer. *ſ.* 10.

And every perſon who ſhall buy any cyder or perry, or any fruit to make into cyder or perry, and ſhall ſell any cyder or perry ſo bought or made, by the hogſhead or any greater or leſſer meaſure; or ſhall ſell any cyder or perry in leſs quantity then 20 gallons at a time, whether the ſame be made from fruit of his own growth or from bought fruit; ſhall be deemed a dealer in and retailer of cyder or perry. *ſ.* 11.

Provided nevertheleſs, that when ſuch dealer in or retailer of cyder or perry made from fruit of his own growth, ſhall ſell the ſame to any other dealer or retailer, who ſhall purchaſe the ſame to ſell again; ſuch purchaſer, receiving the ſame with a proper certificate of the duties having been charged, ſhall not be charged with the ſaid additional duty of 6 *s.* a hogſhead impoſed by this act on cyder and perry ſold by retail: And if the cyder or perry, made by ſuch dealer or retailer from fruit of his own growth, ſhall be ſold by the maker thereof in leſs quantity than 20 gallons at

at a time, such dealer or retailer shall not be charged with the said additional duty. *s.* 12.

And every such dealer in and retailer of cyder or perry made from fruit of his own growth, shall be liable to all the regulations which any dealer in or retailer of cyder or perry is liable to by this or any other act now in force for managing the duties on cyder or perry. *s.* 13.

And for preventing disputes that may arise touching charging the duties on cyder and perry; it is declared, that cyder or perry made in Great Britain, in no case whatsoever shall pay or be chargeable with more than 16 *s.* 8 *d.* a hogshead. *s.* 14. (8 *G.* 3. *c.* 4. *s.* 22.)

And to prevent frauds being committed by dealers and retailers, or factors and agents, in ordering quantities to be removed immediately from the maker to the persons to whom they are consigned by such dealers and retailers, factors and agents, without coming into the possession of such dealers, retailers, factors, or agents, whereby the duties are prevented from being charged; it is enacted, that if any such dealer or retailer, factor or agent, shall cause such cyder or perry so to be removed from the maker to the person contracting for the same, without the duties having been first charged, and without a certificate from the officer of excise (which he shall give without fee) signifying the quantity, and number of casks or other package, and that the duties have been charged, he shall forfeit 50 l. *s.* 15.

Provided always, that the said duties shall be drawn back on distillation into low wines and spirits: And if such cyder or perry, having paid the duties, shall afterwards, by being unfit for sale as cyder or perry, be charged with the duties on vinegar; three commissioners of excise, or two justices. on proof thereof, shall discharge the duties thereon imposed by this act. *s.* 16.

Duty on mum.

5. For every barrel of mum imported shall be paid the sum of 25 *s.* And moreover by the 12 *Ann. st.* 1. *c.* 2. and 13 *G. c.* 7. for every barrel of mum made or imported, over and above all other duties, shall be paid by the maker or importer, 10 *s.*

Duty on metheglin and mead.

6. For every gallon of metheglin or mead, sold by retail or otherwise, shall be paid by the maker 11½d.

Duty on sweets.

7. For every barrel of liquor made for sale, by infusion, fermentation, or otherwise, from fruit or sugar, mixed or unmixed with other ingredients, commonly called sweets or made wines, shall be paid 12 *s.* 10 *G.* 2. *c.* 17. *s.* 2. But this shall not extend to wines made of *British* grapes. *s.* 7.

Duty on verjuice.

8. Verjuice made for sale, shall pay as cyder and perry. 7 & 8 *W.* *c.* 30. *s.* 28.

Duty on vinegar imported.

9. For every tun of vinegar imported shall be paid 13 l. and if imported by strangers 30 s. more. And by the 18 *G.* 2. *c.* 9. and 3 *G.* 3. *c.* 12. 16 l. more for *French* vinegar, and other vinegar 8 l.

Duty on home vinegar.

10. For every barrel (at 34 gallons to the barrel) of vinegar, vinegar beer, or liquors preparing for vinegar, made for sale, shall be paid 11 s. 1 d.

Note; This shall extend to vinegar made for pickles, but not to vinegar for making white lead. 8 *An.* *c.* 7. *s.* 4, 5.

And all stale beer, returns of beer or ale, cyder, verjuice, or any other liquors proper to be made into vinegar, which shall be found in the possession of any common vinegar maker, (except such as are to be drank in his family, and which shall be kept separate for that purpose) shall be deemed vinegar, or liquors preparing for vinegar. 10 & 12 *W.* *c.* 21. *s.* 11.

Notice and entry of vessels and places for making the same.

11. By the 15 *C.* 2. *c.* 11. No common brewer, innkeeper, victualler, or other retailer of beer or ale, shall without first giving notice at the next office of excise, or to the commissioners or subcommissioners, or one of them, erect, alter, or inlarge, any tun, fat, back, cooler, or copper, and make use thereof for brewing or making any beer, ale, or worts; on pain of 50 l. And every other person, in whose occupation any house, outhouse, or other place shall be, where any such private tun, fat, back, cooler, or copper shall be found, shall also forfeit 50 l. And the same, together with all beer, ale, or worts therein, shall be taken up, seized, and forfeited. *s.* 1.

And by 5 *G.* 3. *c.* 43. If any common brewer shall *alter* the position of any tun, batch, float, cooler, or copper, after the same hath been set up and fixed, without first giving notice thereof in writing to the officer; or shall place any boards, stone, wood, or any other materials at the dipping place; or shall by any other means prevent or hinder the gager from taking true dips and gages of beer, ale, or worts; he shall forfeit 20 l. *s.* 25.

And the officer of excise in the day time, and in the presence of a constable, where he shall have just suspicion, that any private back, tun, or other concealed vessel or receptacle are used by any brewer, maker, or retailer of exciseable liquors, on request first made, and cause declared, may break open the door, or any part of his brewhouse, warehouse, or other room in his possession, and enter

ter, and break up the ground in ſuch houſe or room, or ground near adjoining in his poſſeſſion, to ſearch for ſuch back, tun, or other veſſel, or any pipe or conveyance leading thereto; and if he finds any private pipe or other conveyance, he may ſearch and follow the ſame, and if it ſhall lead into any ground, houſe, or place in the poſſeſſion of any other perſon, on like requeſt, and with a conſtable, he may enter the ſame, and break open the ground, or any part of the houſe if occaſion ſhall be, to follow ſuch private pipe, in order to find out ſuch concealed back, tun, or veſſel, making good the ground or houſe ſo broken up, or giving reaſonable ſatisfaction to the owner: And if any perſon ſhall oppoſe ſuch officer, he ſhall forfeit 20 l. 7 & 8 *W.* *c.* 30. *ſ.* 27.

And if any *vinegar maker* ſhall without giving ſuch notice, uſe any ſtorehouſe, warehouſe, cellar, or other place for making or keeping any vinegar, vinegar beer, or liquors preparing for vinegar; he ſhall forfeit 50 l. 10 & 11 *W.* *c.* 21. *ſ.* 14.

In like manner, every dealer in and *retailer* of cyder and perry, and other perſon receiving into his cuſtody either of them for ſale, and every perſon who ſhall buy any fruit to make into cyder or perry for ſale, ſhall make entry of his ſtorehouſes, cellars, and other places, at the exciſe office within the diſtrict; on pain of 50 l. 1 *G.* 3. *c.* 3. *ſ.* 21.

So alſo, the maker of *ſweets* for ſale ſhall firſt give ſuch notice, of his name and place of abode, and of the rooms and places he intends to uſe for making or keeping of ſweets or made wines; on pain of 20 l. 10 *G.* 2. *c.* 17. *ſ.* 4. And any perſon who ſhall ſell or uſe any the materials abovementioned, in making of wines, and in whoſe cuſtody above two gallons ſhall be found, ſhall be deemed a maker of ſweets for ſale. 10 & 11 *W.* *c.* 21. *ſ.* 5.

12. No common brewer ſhall keep any pipe or ſtop cock under ground, or any other private conveyance, by which any beer, ale, or worts may be conveyed from one tun or brewing veſſel to another, or into any other place, nor ſhall have any hole in any tun, batch, or float, by which any beer, ale, or worts may be conveyed into or out of the ſame; on pain of 100 l. 8 & 9 *W.* *c.* 19. *ſ.* 4. Private pipes.

And the exciſe officer in the day time, and in preſence of a conſtable, on requeſt made, and cauſe declared, may break up the ground in any common brewhouſe, or the ground near adjoining, or any wall, partition, or other

place, to search for any such private pipe, or other conveyance, and on finding may follow the same, and break up the ground, house, wall, partition, or other place, thro' or into which the same shall lead, and break up or cut such pipe or other conveyance, and may turn any cock to try whether it can convey as aforesaid. *s.* 5.

And if on search no such pipe or other private conveyance shall be found, the officer shall make good the ground, wall or other place so broken up, or make satisfaction to the owner; And if any person shall oppose such officer, he shall forfeit 50 l. *s.* 6.

But any common brewer many use any pipes, stop-cocks, or other conveyances above ground, which are publick and in open view, for letting his worts out of his copper into his publick backs or coolers; and out of the same into his tuns, batches, or floats; or out of the tun into his casks. *s.* 7.

Private cellar.

13. No common brewer, innkeeper, victualler, or other retailer of beer or ale, shall use or keep any private storehouse, cellar, or other place for laying of any beer or ale, or worts, in cask; on pain of 50 l. and every other person in whose occupation any such place shall be, shall also forfeit 50 l. 15 *C.* 2. *c.* 11. *s.* 1. 1 *W. st.* 1. *c.* 24. *s.* 17.

Private person suffering liquors to be brewed in his house.

14. If any person inhabiting in a market town, city or town corporate, or parts adjoining to a city or town corporate, where there is a common brewhouse, having and lawfully using any private brewing vessels for making beer or ale to be consumed in his own private family, shall permit any beer, ale or worts to be brewed in his house, or other place thereunto adjoining, other than for his own family, servants, labourers, or to others by way of charity, hospitality, or free gift; or shall lend out any of his brewing vessels, other than which are moveable and unfixt, he shall forfeit 50 l. 22 & 23 *C.* 2. *c.* 5. *s.* 10.

Gager to enter and take account.

15. The gager shall at all times, as well by night as by day (and if by night, then in presence of a constable) be permitted upon his request to enter the brewhouse, and all other houses and places belonging to or used by any person brewing of beer, or by any retailer of beer, ale, worts, perry, cyder, or metheglin; and to gage all coppers, fats, and vessels in the same; and to take an account of all such liquors brewed or made therein; and thereof shall make return in writing to the commissioners or subcommissioners, leaving a true copy of such

ſuch return under his hand with ſuch brewer, maker, or retailer; which return ſhall be a charge upon ſuch brewers, makers or retailers. 12 *C.* 2. *c.* 24. *ſ.* 33.

And if any brewer ſhall bribe the gager to make a falſe return, he ſhall forfeit 10 l. and the officer taking the bribe ſhall alſo forfeit 10 l. 15 *C.* 2. *c.* 11. *ſ.* 16.

And if any ſuch common brewer, maker, or retailer ſhall refuſe to permit ſuch gager to enter his brewhouſe or other place aforeſaid, or to gage or take account of his veſſels or liquor aforeſaid, he ſhall be forthwith forbidden by the gager to ſell, carry out, or deliver to any of his cuſtomers, any beer, ale, or other the liquors aforeſaid; and if he ſhall after ſuch warning given, ſell, carry, or deliver out the ſame, or any part thereof, not having paid the duty of exciſe, he ſhall beſides the forfeiture of double value, forfeit alſo the ſum of 10 l. 12 *C.* 2. *c.* 24. *ſ.* 33.

And by the 7 & 8 *W.* *c.* 30. If any common brewer, innkeeper or victualler, ſhall on requeſt or demand made by the gager in the day time, or in the night in preſence of a conſtable, refuſe to permit him to come into his houſe, brewhouſe, or other place uſed by him; or being entred, ſhall refuſe him to ſtay in the brewhouſe, whilſt his guile is brewing, and quietly gage and take an account of the ſeveral worts as they are brewed off, and let into his backs and tuns, and to ſee their ſtrong and ſmall drink cleanſed and carried out without mixture, and to take an account of the goods in the meſh tun, or the quantity of malt from which ſuch worts are made; he ſhall forfeit 20 l. and the proſecutor ſhall not be obliged to prove that the party carried out any part of ſuch guile before he paid the duties. *ſ.* 22.

And by the ſaid act, if any maker of *vinegar*, *cyder*, *metheglin*, *mead*, or *ſweets* for ſale, ſhall conceal any vinegar, or liquor prepared for vinegar, or any cyder, metheglin, mead, or ſweets from the view of the gager, he ſhall for every barrel of vinegar or liquor prepared for vinegar, or ſweets, forfeit 40 s. for every hogſhead of cyder 40 s. and for every gallon of metheglin or mead 5 s. *ſ.* 16.

And if any maker or retailer of vinegar, or other the liquors laſt mentioned, ſhall on requeſt or demand made by the gager in the day time, or if by night in the preſence of a conſtable, refuſe to permit him to enter his houſe, ſtorehouſe, or other place uſed by him, and to

take account of the ſaid liquors; he ſhall forfeit 15 l. *ſ.* 17.

And by the 6 *G.* 3. *c.* 14. If any perſon ſhall obſtruct the exciſe officer in execution of the powers of that act, in relation to the duties on cyder and perry; he ſhall forfeit 40 l. *ſ.* 17.

Indifferent gagers may be ſworn.

16. As often as there ſhall be occaſion, two able artiſts ſhall be appointed, one of them by the commiſſioners or ſubcommiſſioners, and the other by the brewers of any city or place; who ſhall be ſworn before a juſtice, to take and compute the juſt contents and gage of all coppers, fats, tuns, backs, and coolers, and all other brewing veſſels of that nature, and to deliver under their hands one copy of the contents to the commiſſioners and ſubcommiſſioners, and another to each reſpective brewer. 15 *C.* 2. *c.* 11. *ſ.* 7.

Brewer to declare how much he intends to make.

17. Every common brewer who ſhall make any guile of beer or ale, ſhall declare to the gager, how much ſtrong beer or ale he intends to make of ſuch guile, and how much ſmall, before any part of the guile is cleanſed or removed out of his tuns; and if ſuch brewer or his ſervants ſhall refuſe to make ſuch declaration, the gager ſhall return the whole as ſtrong, and the brewer ſhall alſo forfeit for every barrel in ſuch guile 20 s. And if ſuch brewer or his ſervants after ſuch declaration ſhall make any increaſe of the ſtrong beer or ale, or if the gager ſhall find any beer, ale, or worts of the ſame guile laid off, over and above the quantity ſo declared; he ſhall forfeit for every barrel ſo increaſed, laid off, or found over and above ſuch quantity 5 l. and the ſervant aſſiſting therein 20 s. and in default of payment be impriſoned three months: And if on an information againſt the brewer for the ſaid penalties, it appear by his evidence, that the ſtrong beer or ale ſo declared, was increaſed by adding to or mixing with it any beer or ale that was left in the brewhouſe of a former guile, he ſhall nevertheleſs incur the penalties, except it be alſo proved upon oath that the ſtrong beer or ale ſo added to ſuch guile, was added in the ſight and view of the gager. 8 & 9 *W.* *c.* 19. *ſ.* 2.

Mixing drink of a former brewing.

18. And whereas many brewers, having ſtrong beer or ale remaining in the brewhouſe from the time it was brewed, until the next guile or brewing, the quality of which they frequently alter by mixing with the ſame new ſmall beer, or old returned drink, and then add the beer and ale ſo altered to the next guile; if it ſhall appear to the

the gager that the quality of ſuch ſtrong beer or ale ſo remaining in the brewhouſe of a former guile, and added to a guile of new drink, hath been ſo altered ſince it was brewed, he ſhall return all ſuch beer and ale ſo altered and added to a guile of new drink, as if the ſame were then originally brewed, and had never been charged before. 8 & 9 *W.* *c.* 19. *ſ.* 3.

19. If any common brewer, innkeeper, or victualler, ſhall cleanſe or remove out of his brewhouſe any part of his guile, or brewing of beer, ale, or worts, before the whole of ſuch guile is brewed off, and be in his tuns, backs, or coolers, and until the gager ſhall or might have taken an account of the ſame, without firſt giving notice to the ſupervifor or gager, at what time, and how much of ſuch guile or brewing he intends to cleanſe or remove, and where he intends to diſpoſe of the ſame; he ſhall for every barrel forfeit 40 s. 7 & 8 *W.* *c.* 30. *ſ.* 21. Removing drink before the whole is brewed off.

20. Where it ſhall appear to the gager, that any worts are miſſing, or not fairly let down into the tun, and the gager cannot find the ſame, he may charge for ſo much beer or ale, as ſuch worts ſo miſſing would reaſonably make. 1 *W.* *ſt.* 1. *c.* 24. *ſ.* 6. Gager may charge for worts miſſing.

21. Gagers may take their gages, and make their returns and charges, upon warm worts in the backs, coolers, or other veſſels; and in ſuch caſe make allowance of one tenth part thereof for waſh and waſte; which worts ſhall not be afterwards charged, when made into beer or ale. 1 *W.* *ſt.* 1. *c.* 24. *ſ.* 7. Gage may be taken in warm worts.

22. If any common brewer, innkeeper, victualler, or other retailer of beer or ale, ſhall after an account hath been taken by the gager, convert any ſmall beer or ſmall worts into ſtrong beer ar ale, by mingling the ſame, and ſhall ſell, deliver out, or retail the ſame, without giving notice to the ſame gager, of the quantity ſo mingled and converted, or if any ſuch brewer or retailer ſhall conceal or convey any beer, ale, or worts not gaged, from the ſight of the gager, whereby the king may be defrauded of the duty; he ſhall forfeit 20 s. a barrel. 15 *C.* 2. *c.* 11. *ſ.* 12. 1 *W.* *ſeſſ.* 1. *c.* 24. *ſ.* 11. Mixing ſma'l beer with ſtrong.

And by the 2 *G.* 3. *c.* 14. If any common or other brewer, innkeeper, victualler, or retailer of beer or ale, ſhall mix, or cauſe or ſuffer to be mixed, in any veſſel, tub, meaſure, or otherwiſe howſoever, any ſtrong beer, ale or ſtrong worts, with any ſmall beer or ſmall worts or with water, after the gage ſhall have been taken; he ſhall forfeit 50 l. *ſ.* 2.

Time of delivering out.

23. No common brewer ſhall ſell, deliver, or carry out any beer or ale to any of his cuſtomers, either in whole caſk or by the gallon, in any city or market town, before notice given to an officer of exciſe, but between three in the morning and nine in the evening from *Mar.* 25. to *Sep.* 29. and between five in the morning and ſeven in the evening between *Sep.* 29. and *Mar.* 25. on pain of 20 s. a barrel. 15 *C.* 2. *c.* 11. *ſ.* 11.

And by the 10 & 11 *W.* *c.* 21. No *vinegar maker* ſhall receive into his cuſtody any liquors for making of vinegar, nor deliver out any vinegar in caſks or by the gallon, without notice firſt given to the officer, unleſs from *Sep.* 29. to *Mar.* 25. yearly, between ſeven in the morning and five in the evening; and from *Mar.* 25. to *Sep.* 29. between five in the morning and ſeven in the evening; on pain of 50 l. *ſ.* 12.

And on receiving ſuch liquors into his cuſtody, he ſhall ſhew the ſame to the gager before he mix them with any other liquors, rape, or other materials; on pain of 20 l. *id. ſ.* 13.

Mixing after delivered out.

24. If any common brewer, or innkeeper, ſhall on carrying out his brink, or after it is carried out, mix any ſmall beer or ſmall worts, with any ſtrong beer or ale on his dray, or in any victualler's cellar, or other place; he ſhall forfeit 5 l. and the gager may taſte the drink upon the dray, and alſo on requeſt may enter the cellar or other room in the poſſeſſion of any innkeeper or victualler that ſhall receive any drink from a common brewer, and taſte the drink in the ſame; and if the innkeeper or victualler ſhall refuſe him to enter into his cellar or other rooms, or to taſte the drink in the ſame, he ſhall forfeit 5 l. 7 & 8 *W.* *c.* 30. *ſ.* 23.

Mixing by the retailer.

25. No retailer of beer or ale, ſhall after the receipt thereof from the common brewer, mix any beer, ale, or worts, of extraordinary ſtrength, with any ſmall beer, ale, or worts, in any veſſel containing three gallons or more; on pain to forfeit for every barrel ſo mixt double the duty of exciſe for ſtrong beer or ale, and ſo proportionably for any greater quantity. 22 & 23 *C.* 2. *c.* 5. *ſ.* 11.

Meaſure and allowance for leakage, within the bills of mortality.

26. And for avoiding uncertainties in the returns of the gagers, the barrel of beer (within the bills of mortality) ſhall be 36 gallons of four quarts to the gallon, according to the ſtandard in the exchequer; and the barrel of ale 32 gallons: And all other the liquors aforeſaid, ſhall be reckoned according to the wine gallon. 12 *C.* 2. *c.* 24. *ſ.* 34. 1 *W.* *ſt.* 1. *c.* 24. *ſ.* 5.

And

And the common brewer, not selling the same by retail, for waste by fillings and leakage, shall be allowed on every 23 barrels of beer, whether strong or small, three barrels; and upon every 22 barrels of ale, two barrels. 12 *C.* 2. *c.* 24. *s.* 36.

But if any common brewer shall make a false entry, and be convicted thereof; he shall, over and above other penalties, forfeit the said allowance for six months then next ensuing. 12 *C.* 2. *c.* 24. *s.* 37.

27. In all other places, 34 gallons shall be reckoned for a barrel of beer or ale; and the allowance for waste shall be 2½ on every 23 barrels. 1 *W. st.* 1. *c.* 24 *s.* 5. In other places.

28. Notes of every *gage*, signed by the gagers, containing the inches and tenths of the backs, and wants of the tuns and quality of the liquors, shall be left by them with the common brewers of ale or beer, or some servant (if demanded) at the time of taking the gages; on pain of 40s. 7 & 8 *W. c.* 30. *s.* 46. Notes of the gage and charge to be left.

And by the same act, the gager shall, within three days after the end of every week, deliver to or leave with the brewer or retailer, or their servants, a true copy under his hand of each respective *charge* by him made, containing the quantity and quality of the liquors by him charged in such week; and if he shall neglect or refuse (after demand in writing, 12 *G. c.* 28. *s.* 30.) to leave such copy, or shall charge such person more than such copy contains, he shall forfeit 10l. *s.* 25.

29. The commissioners of excise or appeals, or justices of the peace, on complaint of any over charge returned upon them by the gager, shall hear and determine the complaint, and examine witnesses on oath, and thereupon, or by other due proof, may discharge such complainant of so much of his charge as shall be made out before them. 1 *W. sess.* 1. *c.* 24. *s.* 13. Relief in case of over charge.

30. All common brewers of beer and ale, shall once in every week; and all innkeepers, alehousekeepers, victuallers and other retailers of beer, ale, cyder, perry, or metheglin, brewing, making or retailing the same, shall once in every month, make entries at the excise office, of all such liquors brewed, made, or retailed in that week and month respectively. 12 *C.* 2. *c.* 24. *s.* 29. Entry and payment of duties.

And all such common brewers who do not once a week make due entries, shall forfeit 10l. And every such innkeeper, who doth not make true entries once a month, shall forfeit 5l. And every alehousekeeper, victualler, or other

other retailer, who doth not once a month make due entries, shall forfeit 20s. *id. s.* 30.

And every common brewer who shall not pay within a week after he made his entry, or ought to have made his entry, shall pay double value of the duty; and every innkeeper, alehousekeeper, victualler, or other retailer who shall not pay within a month after he made his entry, or ought to have made his entry, shall pay double value of the duty. *id. s.* 31.

Provided that no such person shall be compelled to travel for making the said entries, or payment of the said duties, or other cause whatsoever touching the same, if he live in a market town, out of the said town; if he live out of a market town, then to no other place than to the next market town to his habitation in the same county, on the market day. *id. s.* 32.

But no common brewer shall be prosecuted for any forfeiture for any misentry or short entry, if he shall in one week after the delivery of the copy of the return made by the gager, rectify his entry according to the said return, or otherwise discharge himself. 15 *C.* 2. *c.* 11. *s.* 6.

But no brewer shall have any benefit of this proviso, on any information to be brought against him for non-entry, false entry, or non-payment; if it shall appear by the evidence, that he did not *bona fide* shew to the gager all the beer, ale, and worts of each respective guile, for such time for which such copy of the return was made; or if any apparent fraud was acted, to defraud the king of his duty, for any part of the drink brewed in the time for which such copy of the return is made or given by the gager. 1 *W. sess.* 1. *c.* 24. *s.* 10.

Exception of selling in fairs.

31. But if any person shall brew, and sell by retail, any small quantities of beer or ale in any fair, who is not otherwise a common brewer or retailer thereof, and shall before such selling and retailing, pay the excise for the same; he shall be freed from all penalties relating to such entries, and the like. 12 *C.* 2. *c.* 24. *s.* 39.

Permit for removal after duty paid.

32. If any *sweets*, having paid the duty, shall be intended to be removed, the excise officer shall on request give a certificate under his hand, expressing the quantity and quality, and from whom and to whom they are to be sent; and if any maker shall otherwise remove them, or vintner receive them, he shall forfeit 10s. a gallon, and also the liquor and casks. 6 *G. c.* 21. *s.* 22.

Compounding.

33. The commissioners and subcommissioners may compound with innkeepers and others for the duties. 12 *C.* 2. *c.* 24. *s.* 40.

But

But no perſon who hath compounded ſhall, during the term of ſuch compoſition, ſuffer any beer or ale to be brewed within his brewhouſe, for any other common brewer, without firſt giving notice to the commiſſioners or ſubcommiſſioners, and forthwith paying down the exciſe thereof; upon pain that as well the brewer who ſhall brew the ſame, as the brewer for whom it ſhall be brewed, ſhall forfeit 5*l.* for every barrel. 15 *C.* 2. *c.* 11. *ſ.* 14.

Utenſils liable to the penalties and duties.

34. All the brewing veſſels and utenſils for brewing, into whoſe hands ſoever they ſhall come, and by what conveyance, or title ſoever they be claimed, ſhall be ſubject to all the debts and duties of exciſe in arrear for any beer or ale made in the ſaid brewhouſe; and ſhall alſo be ſubject to all penalties and forfeitures againſt the laws of exciſe; and it ſhall be lawful to levy debts and penalties, and uſe ſuch proceedings againſt the utenſils therein contained, as it may be lawful to do, in caſe the debtor or offender uſing the ſaid utenſils had been the real owner thereof. 15 *C.* 2. *c.* 11. *ſ.* 13.

Limitation of actions.

35. No information ſhall be brought againſt any common brewer, or alehouſekeeper, vinegar maker, or cyder maker, for any miſentry or offence, but within three months after the offence committed; and notice thereof ſhall be given to him in writing, or left at his dwelling houſe, within a week after laving and entring the imformation. 1 *W. ſeſſ.* 1. *c.* 24. *ſ.* 16. 12 & 13 *W. c.* 11. *ſ.* 17.

Delivering materials to diſtillers.

36. If any common brewer, or maker of cyder, making beer, ale, or cyder for ſale, ſhall deliver to any diſtiller or vinegar maker, any waſh, tilts, ale-beer, vinegar-beer, or cyder, without firſt giving notice to the gager, what quantity he intends to deliver, and when, and to whom; he ſhall forfeit for every barrel 20s. 8 & 9 *W. c.* 19 *ſ.* 9.

Carrying coaſtwiſe.

37. The maſter of any veſſel, in which ſhall be ſhipped any *cyder* or *perry* to be carried coaſtwiſe, ſhall, within three days after his arrival at any port where any part thereof is to be delivered, give to the proper officer of exciſe there an account in writing of the whole quantity by him received on board, diſtinguiſhing therein the names and places of abode of the perſons by whom the ſame was put on board, and at what place; and the names and places of abode of the perſons to whom the ſame was conſigned, and where to be delivered: Which if he ſhall not do, or ſhall deliver any part thereof at ſea, or in any other place than where it was conſigned, (unavoidable accidents excepted;) he ſhall forfeit 20*l.* And he ſhall

ſhall, within 21 days after his arrival at the place of delivery, land all the cyder and perry to be delivered there; on pain of forfeiting all ſuch as ſhall not be ſo landed, and the ſame may be ſeized by any officer of exciſe, together with the caſks or other package. 6 *G.* 3. *c.* 14. *ſ.* 8.

Exportation.

38. Ale, beer, cyder, or mum, may be exported; paying cuſtom 1 s. a ton. 1 *W. c.* 22.

And on exportation thereof the exciſe ſhall be repaid. 22 & 23 *C.* 2. *c.* 5. *ſ.* 15. 7 *G. ſt.* 1. *c.* 20. *ſ.* 31. 6 *G.* 3. *c.* 14. *ſ.* 16.

But by the 1 *G.* 3. *c.* 7. on repayment of the exciſe on ſtrong beer and ale, there ſhall be a deduction of 3 d. a ton for the charges of the officers. *ſ.* 5.

And when barley is at 24 s. a quarter or under; a bounty ſhall be paid to the exporter of ſtrong beer or ale, of 1 s. a barrel. *ſ.* 6.

II. Candles.

Duty on candles imported.

1. For every pound of tallow candles imported, ſhall be paid in the whole, by the ſeveral acts, 2 d. $4\frac{1}{4}$. 2 *W. ſeſſ.* 2. *c.* 4. *ſ.* 37. 8 *An. c.* 9. *ſ.* 1. 9 *An. c.* 6. *ſ.* 11.

For every pound of wax candles imported, 8 d. 8 *An. c.* 9. *ſ.* 1. 9 *An. c.* 6. *ſ.* 11.

Duty on candles made in Great Britain.

2. For all candles made of wax, or uſually called or ſold for wax candles (notwithſtanding the mixture of any other ingredients) made in *Great Britain*, ſhall be paid 8 d. a pound:

All other candles 1 d. a pound. 8 *An. c.* 9. *ſ.* 1. 9 *An. c.* 6. *ſ.* 11.

Ruſh lights excepted.

3. But the ſaid duties ſhall not be charged on ſuch ſmall ruſh lights, as ſhall be made by any perſons to be uſed in their own houſes only, ſo as none of them be ſold or delivered out or made for ſale, and ſo as they be once only dipped in, or once drawn thro' greaſe or kitchen ſtuff, and not thro' any tallow melted or refined. 8 *An. c.* 9. *ſ.* 31.

Oil not to be uſed inſtead of candles.

4. During the continuance of the duties upon candles, no perſon ſhall uſe in the inſide of his houſe, any lamp, wherein any oil or fat (other than oil made of fiſh within *Great Britain)* ſhall be burned for giving light; on pain of 40 s. 8 *Ann. c.* 9. *ſ.* 18.

Places of making candles to be entred.

5. No maker of candles ſhall erect, ſet up, alter, or uſe any melting houſe, workhouſe, warehouſe, ſtorehouſe, ſhop, room, or other place for the making or keeping of candles, or for the melting or keeping any wax, tallow, or other materials proper to be made into candles; or uſe any cop-

per,

per, furnace, mould, or other veſſel for melting of wax, tallow, or other materials to be made into candles; without notice thereof being firſt given in writing at the next office of exciſe; on pain of 50l. 8 *An. c.* 9. *ſ.* 6.

And all candles, wax, tallow, and other materials for making candles, which ſhall be found in any private melting houſe, workhouſe, or other place, and all private coppers, furnaces, and other veſſels, for which no entry ſhall be made, or notice given, ſhall be forfeited, or the value thereof. 8 *An. c.* 9. *ſ.* 17.

And by the 11 *G. c.* 30. If any maker of candles (except compounders) ſhall uſe any melting houſe, ſhop, or other place, for making or keeping of candles, or for melting or keeping of wax, tallow, or other materials, or uſe any copper or other veſſel for melting the ſame, or any moulds or other utenſils for making of candles, without having made entry thereof in writing at the next exciſe office; he ſhall forfeit 100l. *ſ.* 23.

And the officer between five in the morning and eleven in the evening, with or without a conſtable, and between eleven in the evening and five in the morning, with a conſtable, ſhall be permitted on requeſt to enter and ſearch; and all cheſts and other like things looked up, ſhall on his requeſt be opened; on pain that every perſon obſtructing or moleſting him, ſhall forfeit 100l. 11 *G. c.* 30. *ſ.* 24.

And if the officer on his ſearching any unentered houſe or place, ſhall find candles either made or making, or tallow or other materials melting or melted, or cottons or ruſhes ſpread, or any copper, mould, or other utenſil warm with tallow or other materials; this ſhall be ſufficient evidence to convict the offender in the penalty of 100l. for having uſed the ſame not being entered. 11 *G. c.* 30. *ſ.* 25.

And leaving a ſummons at the place where the diſcovery was made, directed to the perſon proſecuted by his right or aſſumed name, ſhall be deemed as effectual as if perſonally delivered to him, and by his proper name. *id. ſ.* 26.

6. The officer ſhall at all times, by day or by night, and if in the night, then in preſence of a conſtable, be permitted on his requeſt, to enter the houſe, melting houſe, warehouſe, or other place, belonging to, or uſed by any perſon who ſhall be a maker of candles; and by weighing or tale of the candles, or otherwiſe, to take an account of the quantity; and ſhall thereof make a return in writing to the commiſſioners, or to whom they ſhall appoint; leaving a true copy of ſuch report, under his hand,

Officer to enter and take account.

hand, with or for the maker; and if he ſhall refuſe or neglect to leave ſuch copy (on demand thereof made in writing, 12 *G. c.* 28. *ſ.* 30.) he ſhall forfeit 40 s. 8 *An. c.* 9. *ſ.* 10.

The maker to keep ſcales and weights.

7. And the maker ſhall keep juſt ſcales and weights, where he makes his candles; and ſhall permit and aſſiſt the officer to make uſe thereof, on pain of 10 l. 8 *An. c.* 9. *ſ.* 11.

Notice and time of making.

8. No maker of candles for ſale, ſhall begin to make any courſe or making of candles, without notice thereof firſt given to the officer, unleſs from *Sep.* 29 to *Mar.* 25. yearly, between ſeven in the morning and five in the evening; and from *Mar.* 25. to *Sep.* 29. between five in the morning and ſeven in the evening; on pain of 10 l. 10 *An. c.* 26. *ſ.* 107.

Maker to declare the number and ſizes.

9. Every maker of candles for ſale, ſhall before he begins to make or dip any making or courſe of candles, declare to the officer the number of ſticks he deſigns to make and the ſize of the candles whereof each ſtick is to conſiſt; and if ſuch making or courſe is intended to be of moulded candles, then he ſhall declare to the officer, before he begins to fill the moulds, how many moulds he intends to fill at ſuch making, and how often he intends at ſuch making to draw the moulds: and if he ſhall neglect or refuſe to make ſuch declaration, or ſhall after ſuch declaration make any increaſe of his number of ſticks, or of the ſizes of his candles in ſuch making or courſe; or in the caſe of making mould candles, ſhall fill a greater number of moulds, or draw ſuch moulds oftner than ſhall be declared; or if he ſhall, after the weighing of any making of candles by the officer, increaſe the weight of ſuch candles, by redipping, or otherwiſe; he ſhall forfeit 10 l. 10 *An. c.* 26 *ſ.* 106.

And by the 11 *G. c.* 30. If any maker of candles for ſale, ſhall begin to make any courſe of candles, not being mould candles, or make preparation for the ſame without notice in writing to the officer of ſuch his intention, and of the time of the day or night when he intends to begin, and of the number of ſticks of which ſuch making is intended to conſiſt, and of the ſizes and number on each ſtick; he ſhall in default hereof, or if he have at ſuch making more ſticks, or more candles, or larger than mentioned in the notice, forfeit 50 l. and if after ſuch notice, he ſhall not begin at the time, or within three hours of it, ſuch notice ſhall be void. *ſ.* 27.

And lighting a fire under a veſſel, for melting the materials, or finding in ſuch a veſſel, or in any mould, the ma-

terials melted or melting, or cottons or ruſhes ſpread or ſpreading, ſhall be deemed to be ſuch a *beginning to work*, as ſhall make him liable to the ſaid forfeiture. *ſ.* 28.

10. The officer ſhall be permitted to take an account of the quantities of wax, tallow, and other materials; and if he ſhall miſs any that he had taken account of at the laſt time he was at the maker's, and ſhall not on demand receive ſatisfaction what is become thereof, the officer may charge ſuch quantity of candles, as the materials ſo miſſing in his judgment would have made, not exceeding 108 lb. of candles for every 112 l. of materials miſſing, and ſo proportionably. 8 *An. c.* 9. *ſ.* 12. The officer ſhall charge for materials miſſing.

And if any ſuch maker ſhall obſtruct the officer, he ſhall forfeit 20 l. *ſ.* 13.

11. Candles cracked or ſpoiled in making, may be defaced by the officer, who ſhall make allowance for the duty. 8 *An. c.* 9. *ſ.* 29. Candles ſpoiled in making.

12. No maker of candles ſhall (on pain of 20 l.) remove any candles, before the officer hath taken account of the ſame, without giving to the officer, within the bills, 24 hours notice; and elſewhere, two days notice, of his intention to remove the ſame. 8 *An. c.* 9. *ſ.* 14. Removing candles before ſurveyed.

13. The maker ſhall keep his candles which have not been ſurveyed, ſeparate from all other candles which have been ſurveyed, for 24 hours after making, within the bills, and for two days elſewhere; unleſs they ſhall have been ſooner ſurveyed by the officer; on pain of 5 l. 8 *An. c.* 9. *ſ.* 15. Candles unſurveyed to be kept ſeparate.

14. If the officer ſhall have cauſe to ſuſpect, that candles are privately making in any place; or that any candles are concealed with intent to avoid the duty; in ſuch caſe, on oath made by ſuch officer before a commiſſioner or one juſtice reſiding near to the place, ſetting forth the ground of his ſuſpicion, ſuch commiſſioner or juſtice may, if he ſhall judge it reaſonable, by ſpecial warrant authorize ſuch officer, by day or night (but if in the night, in preſence of a conſtable), to enter into every ſuch place ſuſpected, and to ſeize and carry away as forfeited all ſuch candles as he ſhall there find ſo privately making, together with all materials then ready or preparing for making the ſame, and alſo all ſuch candles as they ſhall find ſo concealed, together with the boxes or other package containing the ſame: And the perſon that ſhall be found privately making ſuch candles, or in whoſe poſſeſſion any ſuch ſhall be found, ſhall forfeit 100 l. 5 *G.* 3. *c.* 43. *ſ.* 20. Search for candles concealed.

15. If

Further penalty of removing, mingling, or concealing.

15. If any maker of candles for sale, shall mingle candles which have not been weighed by the officer, with those which have; or shall fraudulently remove any before weighing; or conceal any candles or materials: he shall forfeit 100l. 11 *G. c.* 30. *s.* 30.

Entry of candles made.

16. Every person who shall make any candles within the bills of mortality shall monthly, and elsewhere once in every six weeks, make a true entry in writing, at the next excise office, of all candles by him made within such time; which entry shall contain the weight, number, and size of the candles, and what quantity thereof was made at each course in the several weeks; on pain for every neglect of entry to forfeit 20. Which entry shall be upon the oath of the maker or his chief workman, according to the best of their knowledge and belief; the said entries and oaths, within the bills, to be made with and administred by such officer as the commissioners shall appoint at the general excise office, and elsewhere by the collectors or supervisors. 8 *An. c.* 9. *s.* 7.

But he shall not be obliged to go further than the next market town, for making such entry. *s.* 8.

Duty to be cleared off.

17. And the maker shall in four weeks within the bills, and elsewhere in six weeks, after such entry, pay and clear off the duties; on pain of double duty: and no maker after default in payment shall sell, deliver, or carry out any candles till he hath paid off the duty, on pain of double value. 8 *An. c.* 9. *s.* 9.

Candles not entred, nor duty paid.

18. And if there shall be found in the possession of any maker of candles for sale, any candles not mentioned in the entry made by him, and of which the officer hath not had an account, and the duties have not been paid; he shall be chargeable with the duties, and if he do not pay the same, he shall be liable to double duty, unless he shall prove that the duty hath been paid, or that he bought the same of some other chandler who had paid the duty, and that he gave six hours notice in writing to the officer, or at the next excise office, of his intention to buy the same, and of whom. 11 *G. c.* 30. *s.* 29.

Candles where to be sold.

19. No person shall expose to sale any candles, unless in his publick shop or warehouse, publick fair or market; on pain of 5l. 8 *An. c.* 9. *s.* 18.

Compounding.

20. The commissioners or such person as they shall appoint, and in default thereof the collector or supervisor, may compound with persons that make candles for their own private houses, for the duties at 1 s. a year for every

head in the family, to be paid quarterly; and such person shall not be liable to the duties. 8 *An. c.* 9. *s.* 20.

But if any person after composition shall sell or deliver out any candles, or shall permit any other person to make candles in his house or outhouse; or shall have more persons of his family than he shall compound for, without giving notice of them in writing at the next excise office, at or before the next quarter day, and paying the like composition for them, he shall forfeit 5l. and lose the benefit of his composition, and be liable to the duties and survey of the officers; and for every pound of candles so privately sold or delivered out or made, shall forfeit 5s. *s.* 21.

And every such compounder, who shall make default in continuing the same, shall in ten days make entry upon oath of all such candles as he shall be possessed of, at the excise office, on pain of forfeiting 20l. and the candles of which no such entry shall be made; and in six days after such entry, shall pay the duties, on pain of double value of the candles, and his houses and other places shall be liable to the search of the officers. 9 *An. c.* 6. *s.* 14.

Candles carried coastwise.

21. Cocquets granted for shipping candles to be landed in any other part of the kingdom, shall express the quality, quantity, and weight, the mark of the package, and by whom made and sold, and where consigned; and if they shall be shipped without such cocquet, they shall be forfeited, and seized, together with the package. 23 *G.* 2. *c.* 21. *s.* 29.

Exportation and importation.

22. No candles shall be imported, otherwise than in some package, containing at least 224l. of neat candles, and stowed openly in the hold; on pain of being seized and forfeited, together with the package; and the master of the vessel shall forfeit 50l. 23 *G.* 2. *c.* 21. *s.* 27.

But on information brought against such master, he may detain the wages of the mariners, till it be determined; and if it shall appear, that the candles were put on board by any mariner without the master's knowledge, the master may apply such mariner's wages, in payment of the forfeiture. 26 *G.* 2. *c.* 32. *s.* 8.

And the officers of excise (in like manner as the officers of the customs) may go on board any vessel, and search for and seize all candles forfeited, together with the package; and they may likewise seize such as before entry and payment of duties, shall be found unshipping or unshipped. 23 *G.* 2. *c.* 21. *s.* 28.

Candles for which the duty hath been paid, may be exported, and the duty drawn back. 8 *An. c.* 9. *s.* 24, 25, 26.

But no drawback shall be allowed, on the exportation of any foreign candles imported. 23 *G.* 2. *c.* 21. *s.* 36.

And the officers of excise or customs may seize any candles, with the package, that shall be found in any vessel, cart, or other carriage, where they shall have good reason to believe, that the same were made in some private workhouse, or clandestinely imported without payment of duty; or that the same have been exported and relanded after payment of the duty; and if the party in whose possession the same shall be found, shall not at the hearing of the information, make it appear, that the duty hath been paid or secured, he shall forfeit 5*l.* for every 100 lb. weight, and also the candles and package shall be forfeited. *s.* 30.

And if any foreign candles shall be unshipped, with intention to be laid on land, before entry and payment of the duties, or shall be landed again after shipping for exportation upon debenture; the same, together with the package, vessels, boats, horses, and other carriages, used in landing or conveying the same, shall be forfeited, and may be seized by any officers of the customs or excise; and the persons from whom the same shall be seized shall forfeit 5*l.* for every hundred weight. *s.* 31.

And if any person shall knowingly harbour or conceal any candles unlawfully imported, or relanded after shipping for exportation upon debenture; he shall, whether he claims any property therein or not, forfeit 50*l.* for every hundred weight, together with the candles and package. *s.* 32.

And where any such candles shall be seized as forfeited, and no person shall claim the same in 20 days, if it is within the limits of the chief office of excise in *London*, the officer who made the seizure may cause notice signed by the solicitor of excise, to be affixed at the *Royal Exchange*, of the time of proceeding to trial and condemnation of the same by the commissioners of excise; and if it is out of the said limits, then publick notice shall be given by proclamation at the next market town on the market day next after the said 20 days, of the day and place where the justices will proceed to trial and condemnation thereof. And the judgment thereon, shall not be liable to any appeal, or to be removed by certiorari. *s.* 33.

Power of the justices.

23. All the said fines, forfeitures, and penalties, may be recovered and mitigated as by the laws of excise, or in the courts at *Westminster*; and distributed half to the king, and half to him that shall inform or sue. 8 *An.* *c.* 9. *s.* 28. 11 *G.* *c.* 30. *s.* 39. 24 *G.* 2. *c.* 40. *s.* 33.

24. And if the party is not satisfied with any judgment of the justices on the act of 23 *G.* 2. *c.* 21. before mentioned, he may appeal to the next quarter sessions, except in the case before mentioned where no person shall claim the goods seized. *s.* 37. Appeal.

25. And on informations on the said act of 23 *G.* 2. the mitigation shall not reduce the penalty to less than a fourth part, over and above the costs and charges to be allowed. *s.* 38. Mitigation.

26. And where candles shall be seized for nonpayment of duties, or non-entry, and it shall be disputed whether such payment or entry was made or not, the proof shall lie on the claimer, and not on the officer. 23 *G.* 2. *c.* 21. *s.* 35. Proof to lie on the owner.

27. All candles, materials, and utensils for making of candles, in custody of any maker of candles, or person in trust for him, shall be chargeable with all duties in arrear, and subject to all penalties and forfeitures, in the same manner as if the debtor or offender were the lawful owner. 8 *An.* *c.* 9. *s.* 19. Utensils liable to the duties and penalties.

III. Coaches.

1. For every coach, berlin, landau, chariot, calash, with four wheels, chaise marine, chaise with four wheels, and caravan, kept by any person for his own use, or to be let out to hire; shall be paid 4 l. yearly: and for every calash, chaise, and chair with two wheels, kept by any person for his own use, or to be let out to hire; shall be paid 40 s. yearly. 20 *G.* 2. *c.* 10. *s.* 1. Duty on coaches.

But this shall not extend to *licensed hackney coaches*, within *London* and *Westminster* and the suburbs thereof, not employed in carrying persons more than ten miles from the said cities. *s.* 11.

Nor to *coaches kept for sale:* But no such carriage shall, whilst in possession of the coachmaker or other person, be employed for his own use, or for the use of any other person (other than such whose carriage shall be then and there mending), or be let out to hire; on pain of 20 l. *s.* 12.

Nor to any *publick stage coach*, which is constantly employed in carrying passengers for hire, on certain fixed days in every week, and not let to hire by way of by-jobb, for a day, or any longer time. *s.* 7.

Nor to any *post chaise* kept for hire by the postmaster general, or any deputy postmaster: But such post chaises shall in 30 days after letting out the same, be entered by

the owners at the next office of excise; and shall (beside the king's arms) have such mark of distinction fixed thereon, as shall be appointed by the commissioners; on pain of 20l. *s.* 8, 9.

And the commissioners shall cause a mark of distinction to be fixed on every such carriage, that shall be let out to hire; and if any person shall let out to hire any such carriage without such figure fixed thereon, or shall take off the same when fixed; he shall forfeit 20l. *s.* 10.

Moreover, no person shall be obliged to pay the said yearly sum of 4l. for more than five such carriages kept for his own use only; but if he keep the same for supplying any waiting jobb, by the day, week, month, quarter, or any other time, or to be let out to hire, he shall pay 4l. for each, tho' exceeding the number of five; and every person who shall keep such carriage with two wheels, to be let out for hire, shall pay 40s. yearly for each, tho' exceeding the number of five. *s.* 2.

Entry and payment of the duties.

2. Every person who shall keep such coach or other carriage, shall in 20 days after he shall begin to keep the same, and within 20 days yearly after the expiration of 12 calendar months after the time of giving such first notice; ——give notice in writing, at the chief office of excise in *London* (if within the bills); and elsewhere, shall give notice at the next office of excise,—of his keeping the same, and the number, and whether with four or two wheels, and where he resides; and at the same time pay down the duties: on pain of 20l. *s.* 4, 5.

But if the duties are paid, and entry made, before information brought, the party shall not be prosecuted, tho' it be not strictly within the time limited. *s.* 15.

And the said entry and payment shall be registred by the proper officer, and a receipt given for the duty, of which receipt the officer shall keep an indented duplicate. *s.* 6.

Person dying before the end of the year.

3. Where a person shall die before the end of the year, the person claiming title to the coach, may use it, as the deceased might have done. *s.* 16.

Power of the justices.

4. All the said rates and duties, and all forfeitures and offences, shall be determined by the commissioners of excise (or of appeals, in case of appeal), within the limits of the chief office in *London*; and elsewhere, by two justices near; who shall, on complaint upon oath, summon the party, and on his appearance or contempt, may examine the fact, and on proof thereof either by confession, or oath of one witness, give judgment, and issue warrants for levying

vying penalties by distress and sale (if not redeemed in 14 days); which shall be employed (all necessary charges first deducted) half to the use of the king, and half to the informer: And for want of sufficient distress, they may imprison the party till satisfaction is made. *s.* 13, 14.

[But as these duties chiefly affect the nobility and persons of distinction, it had been better if the act had been more explicit with respect to the punishment; otherwise it may not be so safe for justices of the peace, upon such vague and general words, to imprison a peer of the realm, or distrain the goods of a member of parliament during their sessions. But if the justices will proceed, or shall be compelled by *mandamus*, or otherwise, so to do; they must remember withal, that by the 27 *G.* 2. *c.* 20. they may not order the distress to be detained more than eight days, nor less than four.]

5. Persons aggrieved by the determination of the justices, may appeal to the next quarter sessions. *s.* 13. Appeal.

IV. Coffee, Tea, and chocolate.

1. For all coffee imported, shall be paid at the custom house, in the whole, the sum of 3 d. a pound. 10 *G. c.* 10. *s.* 48, 49. Duty on coffee.

And an inland duty, to be paid by the maker or seller, of 2 s. 6 d. a pound. 10 *G. c.* 10. *s.* 4, 6. 5 *G.* 3. *c.* 45. *s.* 12.

Except coffee of the growth of the *British* plantations in *America*; which shall pay only 1 s. 6 d. a pound. 5 *G.* 2. *c.* 24. *s.* 1.

2. No tea shall be imported, but from the place of its growth; on pain of forfeiture. 11 *G. c.* 30. *s.* 8. Duty on tea.

And by the 18 *G.* 2. *c.* 26. Over and above the customs on importation, there shall be paid on all tea, an inland duty of 1 s. a pound, and 25 l. for every 100 l. of the gross price at which it shall be sold at the *East India* company's sales; which shall be paid in ready money by the proprietor to the collector, before it be taken out of the warehouse. *s.* 2.

In order to which, the commissioners may appoint officers to attend at the *East India* company's sales, and take an account of the names of the buyers and prices, and make report thereof to the commissioners; from whence the 25 l. *per cent.* shall be ascertained; and to prevent mistakes, the said officers may inspect the company's books. 18 *G.* 2. *c.* 26. *s.* 6.

And every person declared the best bidder at such sale, shall within three days after, deposit with the company or their clerk 40 s. for every tub and chest of tea, on pain of six times the value, and such sale shall be void, and the same shall in 14 days after be put up again. *s.* 7.

(But by the 7 *G.* 3. *c.* 56. for five years from July 5, 1767, the said inland duty of 1 s. a pound, shall not be paid for any *bohea*, *congo*, *souchong*, or *pekoe* teas, commonly called *black teas*, or any teas known by the denomination of *singlo* teas, which shall be cleared out of the warehouses for consumption within Great Britain. *s.* 1.)

Duty on cocoa nuts and chocolate.

3. No chocolate ready made, or cocoa paste, shall be imported, on pain of forfeiting the same, and double value; and also the bags, casks, and other package. 10 *G.* *c.* 10. *s.* 2.

For cocoa nuts imported, shall be paid at the custom house in the whole, 10 s. a hundred weight. 10 *G.* *c.* 10. *s.* 47, 49.

And if any person shall import any cocoa nut shells or husks, without the nuts, the officers of the customs, excise, or inland duties, may seize them, with the bags, boxes, and package; and after condemnation they shall be destroyed or otherwise disposed of, as the respective commissioners, or three of them shall appoint; and they may reward such officer in any sum not exceeding 20 s. a hundred weight. 4 *G.* 2. *c.* 14. *s.* 12.

For all chocolate made or sold in *Great Britain*, shall be paid by the maker or seller, 2 s. 3 d. a pound. 10 *G.* *c.* 10. *s.* 6. 32 *G.* 2. *c.* 10. *s.* 10.

In what quantities to be stowed.

4. No *coffee* shall be imported otherwise than in cask, chest, case, bag, or other package, which shall contain 112 lb. at the least, to be stowed openly in the hold; on pain of forfeiting the same, together with the package; which may be seized by any officer of the customs or excise. 5 *G.* 3. *c.* 43. *s.* 34.

Officers of excise may go on board and search.

5. The excise officers may go on board any ships, and search as the officers of the customs may do, for coffee, tea, cocoa nuts, chocolate, and cocoa paste, and seize all such as shall be forfeited, or shall be unshipt without entry and payment of duties, with the boxes, bags, and other package. 11 *G.* *c.* 30. *s.* 1.

Ships hovering near the coast.

6. By the 9 *G.* 2. *c.* 35. Where any vessel coming from foreign parts, and having six pounds or more of tea on board, shall be found at anchor, or hovering within two leagues of the shore, or be within the limits of any port, and not proceeding on her voyage, wind and weather

ther permitting; all such tea, with the chests and other package, or the value thereof, shall be forfeited (whether bulk shall have been broken or not), and the same may be seized and prosecuted, or the value thereof sued for by the officers. *s.* 22.

And by the 5 *G.* 3. *c.* 43. Where any vessel coming from foreign parts, and having on board twenty pounds of coffee, shall be found at anchor, or hovering within two leagues of the shore; or shall be discovered to have been within the limits of any port, and not proceeding on her voyage, wind and weather permitting: all such coffee, together with the package, or the value thereof, shall be forfeited, whether bulk shall have been broken or not; and the vessel also with her tackle and furniture shall be forfeited, provided such vessel doth not exceed the burthen of 50 tons. *s.* 38.

7. The importer of any coffee, tea, or cocoa nuts, within 30 days after the master or purser shall have or ought to have made entry at the custom house, of the burthen, contents, and lading of the vessel, shall make due entry of the said coffee, tea, or cocoa nuts, with an officer of excise to be appointed by the commissioners for that purpose; and the same, on paying or securing the duties shall be landed and put into a warehouse, to be provided at the charge of the importer, and approved of by the commissioners of the customs. 10 *G. c.* 10. *s.* 26. 5 *G.* 3. *c.* 43. *s.* 35. The said goods to be entred and warehoused.

And if any person shall import any coffee, tea, or cocoa nuts, without entry at the custom house, and bringing the same into the warehouse; the same shall be deemed clandestinely run, and may be seized by any officer of the customs or inland duties; and the same shall be forfeited with the package, together with the horses, carts, and carriages. 10 *G. c.* 10. *s.* 27.

And if any person shall neglect or refuse to make such entry with the officer of excise as aforesaid, or to land the same as is above directed; all such coffee, tea, and cocoa nuts shall be forfeited, together with the package wherein the same shall be contained on board such vessel, belonging to such importer so neglecting or refusing; which may be seized by any officer of the excise. 5 *G.* 3. *c.* 43. *s.* 35.

Provided, that this shall not extend to any coffee or tea imported by the East India company. *s.* 36.

Owner and officer to have each a lock and key.

8. And the owner of the ſaid goods, and the officer for the inland duties, (who ſhall be appointed by the commiſſioners of the ſaid duties) ſhall have each a lock and key; and the owner may in preſence of the ſaid officer, and of the warehouſe keeper (to be appointed by the commiſſioners of the cuſtoms) view, garble, and ſort the ſaid goods, to make them merchantable, and receive them out in the manner hereafter mentioned. 10 *G. c.* 10. *ſ.* 26, 29, 30.

Taking out of the warehouſe coffee and tea for home conſumption.

9. That is to ſay, As to coffee and tea in the firſt place;—If they are intended to be taken out for home conſumption, the proprietor, within the bills, ſhall make entry with the receiver or collector in *London*, of ſo much as he intends to take out of the warehouſe, and pay down the duty; and elſewhere ſhall make entry at the next office, and pay the duties to the collector; and on producing a certificate ſigned by ſuch collector or receiver (certifying that he has received the duty) to the warehouſe keeper, he ſhall deliver out ſo much as is mentioned in the certificate; and ſhall deliver a permit to accompany ſuch coffee or tea ſo delivered out, which ſhall alſo be ſigned by an officer attending the warehouſe, to prevent the ſeizing thereof. 10 *G. c.* 10. *ſ.* 26.

Taking out of the warehouſe cocoa nuts to be made into chocolate,

10. And as to cocoa nuts, intended to be taken out of the warehouſe, to be made into chocolate—an entry thereof ſhall be made by the proprietor with the receiver or collector, as a charge on him and alſo on the buyer; who ſhall certify ſuch entry to the warehouſe keeper; and on ſuch certificate, the quantity of cocoa nuts mentioned therein ſhall be delivered out with a permit ſigned by the officer at ſuch warehouſe, to be delivered to the officer where they are intended to be carried, that the ſame officer may take the ſame into ſtock. 10 *G. c.* 10. *ſ.* 26.

Taking out of the warehouſe coffee, tea, and chocolate, for exportation.

11. And as to coffee, tea, and chocolate intended for exportation;—it ſhall be delivered out of the warehouſe, on ſecurity given that it ſhall be exported, and not relanded; which ſecurity ſhall be diſcharged, on a certificate under the common ſeal of the chief magiſtrate in any place beyond the ſeas, or under the hands and ſeals of two known *Britiſh* merchants there; that the ſame were there landed, or on proof by credible perſons that it was taken by enemies, or periſhed in the ſeas. 10 *G. c.* 10. *ſ.* 26.

But by the 18 *G.* 2. *c.* 26. No drawback ſhall be allowed on tea exported. *ſ.* 5. Saving that it may be exported to *Ireland*, or the *Britiſh* plantations in *America*, without

without paying the inland duties before mentioned. 21 *G.* 2. *c.* 14. And by the 7 *G.* 3. *c.* 56. for five years from July 5, 1767, the whole duties on importation ſhall be drawn back for all teas exported to *Ireland* or the ſaid plantations. *ſ.* 2.

What quantity ſhall be taken out at a time.

12. And no ſeller or dealer ſhall receive out of the warehouſe, leſs than one hundred weight of each ſort at one time; except where the importation and delivering in ſhall be in leſs quantites, or where the ſame ſhall be ſold in lots or parcels leſs than a hundred weight. 10 *G.* *c.* 10. *ſ.* 34.

Warehouſe keeper and officer to keep an account.

13. And the warehouſe keeper and officer appointed by the commiſſioners of the inland duties ſhall each of them keep a book, wherein they ſhall enter an account of all coffee, tea, and cocoa nuts brought into and carried out of the warehouſe, and the day and time when, and how much was delivered for home conſumption, and how much for exportation, and the names of thoſe for whom it was delivered out; and ſhall every ſix weeks, or oftner if required, tranſmit an account thereof in writing and on oath to the reſpective commiſſioners, with an account how much is remaining in the warehouſe: Which ſaid commiſſioners ſhall in one month appoint a perſon to inſpect the books and warehouſes, and examine the accounts; and if it ſhall appear that any was otherwiſe delivered out, or before payment of the duties on ſuch coffee and tea as were ſold for home conſumption, or giving ſecurity for what was delivered for exportation, the warehouſe keeper and officer reſpectively offending ſhall forfeit 100 l. and be diſabled to hold any publick office. 10 *G.* *c.* 10. *ſ.* 29.

Who ſhall be deemed a dealer in coffee, tea, and chocolate.

14. Every perſon who ſhall keep a publick houſe, ſhop, cellar, or other warehouſe, for ſelling of brandy or other ſpirituous liquors, and ſhall have in his cuſtody any coffee, tea, chocolote, or cocoa nuts above ſix pounds weight, ſhall be deemed a dealer in the ſaid commodities. 11 *G.* *c.* 30. *ſ.* 4.

Licence for retailing.

15. No perſon ſhall be permitted to ſell or retail any coffee, chocolate, ſherbet, or tea, without licence firſt had by order of the general ſeſſions of the peace in the reſpective counties (certificate being firſt ſhewed, that he hath given good ſecurity for payment of the duties to the king); or from the chief magiſtrate of the place in whoſe juriſdiction he ſhall inhabit. And no licence ſhall be granted to any retailer, till ſuch ſecurity ſhall be given by recognizance or otherwiſe: For which licence, recognizance,

and

and security, 12 d. shall be given, and no more, for the payment of the excise. And persons selling without such licence and security, shall forfeit 5 l. a month. 15 *C.* 2. *c.* 11. *s.* 15.

Houses of manufacturing and sale to be entred.

16. Every druggist, grocer, chandler, coffee-house keeper, chocolate-house keeper, and other person selling or dealing in coffee, tea, and cocoa nuts, or making or selling chocolate, either by wholesale or retail, shall before he take any the said goods into his possession make entry in writing of all storehouses, shops, rooms, and other places intended to be used by him, at the office for the division; on pain of forfeiting 200 l. and the said goods found therein, with the canisters, bags, vessels, and other package. 10 *G. c.* 10. *s.* 10.

And no entry of any shop, warehouse, room, or utensil for carrying on any trades aforesaid, shall be deemed a legal entry, unless made in the name of the real owner of, and trader in such shop; and the person who acts as visible owner of such place, or principal manager in such trade, shall be deemed the real owner and trader, and consequently liable for any stock found there, or for not making entries, or other offences. 18 *G.* 2. *c.* 26. *s.* 8.

And none of the said goods shall be offered to sale but in places entred, or in a warehouse to be approved of by the commissioners; on pain of forfeiting the same and treble value, together with the canisters, bags, and other package. 10 *G. c.* 10. *s.* 14.

Notice of bringing in.

17. No coffee, tea, cocoa nuts, or chocolate shall be brought into any such shop or other place, without first giving notice thereof to the officer of the division, and leaving with him a certificate signed by the officer of the division from whence they were brought, that the duties on such coffee, tea, and chocolate have been paid, or that they have been condemned as forfeited; and in case of bringing in of cocoa nuts, that they have been entred with the officers of the customs, or were condemned as forfeited; and expressing the quantity and quality and where the duties were paid or at what port the customs and duties were paid for the cocoa nuts, or were condemned; on pain of forfeiting the same and treble value, with the canisters, bags, and other package. 10 *G. c.* 10. *s.* 11.

Permit when sold to the retailer.

18. And where any one of them shall be sold in the said entred places, above the weight of 6 lb. the officer, shall, on request of the seller, give to the buyer a certificate signed by him, expressing the quanty, and the names

of

of the buyer and seller, and that the duties have been paid, or that the cocoa nuts have been entred with the officers of the customs, or that they have been condemned as forfeited; which certificate shall be left with the officer of the division to which the same is intended to be carried, to prevent the seizing thereof. 10 *G. c.* 10. *s.* 15.

Officers to enter and survey.

19. The officers shall be permitted at all times by day, to enter all warehouses, shops, and other places, and by weighing, gaging, or otherwise, to take an account of the quantity and sorts; in the weighing whereof the owner shall be assisting, and keep just weights and scales; on pain of 100 l. 10 *G. c.* 10. *s.* 12.

Search for goods concealed.

20. And if any officer shall have cause to suspect, that any the said goods shall be concealed, if it is within the bills, then on oath made before two commissioners, or elsewhere, before one or more justices, setting forth the ground of his suspicion, they may by warrant authorize such officer by day or night, but if in the night then in presence of a constable, to enter the place suspected, and seize and carry away the same (if found) as forfeited, together with the bags, canisters, and other package; and if any person shall obstruct such officer, he shall forfeit 100 l. 10 *G. c.* 10. *s.* 13.

And if any seller or dealer shall conceal any the said goods, he shall forfeit the same and treble value, with the canisters, bags, and other package; and if any person shall obstruct the officer in seizing any of the said goods by virtue of this or any future act, or after seizure shall endeavour to rescue the same, or break or damage the vessels or package; he shall forfeit 50 l. *s.* 39, 40.

And by the 11 *G. c.* 30. Two commissioners or any justice of peace, on complaint by an officer on oath, that he suspects any dealer not to have made true entries, setting forth in such oath the causes of his suspicion, may summon such suspected person to appear with his books, and examine him on oath touching the truth of his entry; and if he shall refuse or neglect to appear, or to make such oath, he shall forfeit 20 l. *s.* 12.

True manufacturing of coffee.

21. No person shall mix with coffee, to increase the weight, any butter, grease, water or other materials; on pain of 100 l. and if any dealer shall knowingly buy or sell any so mixed, he shall forfeit 100 l. 11 *G. c.* 30. *s.* 9.

And the commissioners may appoint houses and proper materials for roasting of coffee berries, and officers to attend them, and one person at each house well skilled in roasting

roasting of coffee; to which all persons may resort to have their coffee berries roasted, bringing a certificate from an officer that the duties have been paid, or that it hath been condemned as forfeited; for the roasting of which coffee shall be paid 8 s. a hundred weight. 10 *G. c.* 10. *s.* 31.

But the sellers and dealers may if they think proper, send their own roasters; who shall be permitted to roast the same, paying 3 s. a hundred weight. 10 *G. c.* 10. *s.* 32.

And during the continuance of such roasting houses, no coffee berries shall be roasted, burned, or dried, but in one such house; on pain of forfeiting the same, and 5 s. a pound. 10 *G. c.* 10. *s.* 34.

And if any officer or roaster shall neglect or refuse to attend such house, he shall forfeit 10 l. for the first offence, and 20 l. for the second, and be incapable to hold any office in the revenue. 10 *G. c.* 10. *s.* 34.

True manufacturing of tea.

22. No dealer in tea, or manufacturer, or dyer thereof, shall adulterate it, or alter, or manufacture it with any drug, or mix it with any leaf or other ingredient; on pain of forfeiting the same, and 100 l. 11 *G. c.* 30. *s.* 5.

And by the 4 *G.* 2. *c.* 14. If any dealer in tea shall dye, or manufacture, any sloe leaves, liquorice leaves, or the leaves of tea that have been used, or any other leaves in imitation of tea, or shall mix or colour such leaves of tea, with *terra japonica*, sugar, molosses, clay, logwood, or any other ingredients; or shall offer to sale, or have in his custody any such leaves in imitation of tea, or any such stained leaves of tea mixed with any ingredient; he shall forfeit for every pound weight thereof 10 l. *s.* 11.

True manufacturing and stamping of chocolate.

23. The maker of chocolate, if within the bills, shall weekly, and elsewhere every six weeks, make entry in writing at the next office, of all chocolate made by him within that time, setting forth the weight thereof, on pain of 50 l. Which entry shall be upon oath of the maker or his chief wo kman, according to the best of his knowledge and belief, to be administred within the bills by such officers as the commissioners shall appoint, and elsewhere by the collectors and supervisors. But no person shall be obliged to go further to make entry, than the next market town. 10 *G. c.* 10. *s.* 17.

And he shall in one week within the bills, and elsewhere in six weeks after entry, clear off the duties, on pain of 50 l. besides the duty; and he shall after default

default in payment, ſell or deliver none out till the duty is paid, on pain of treble value. 10 *G. c.* 10. *ſ.* 18.

And he ſhall at the time and place of entry produce the ſame ſo made (on pain of 20 s. for every pound not produced); which chocolate ſhall be tied up with thread in papers of one pound, half a pound, or a quarter of a pound each, and not more or leſs; which ſhall be marked or ſtamped by the officers. 32 *G.* 2. *c.* 10. *ſ.* 16.

And if any perſon ſhall ſell chocolate in any leſs quantity than a quarter of a pound; or ſhall ſell and deliver any chocolate not being duly marked or ſtamped; or not incloſed and tied up with the identical piece of thread directed to be uſed in tying up the ſame before it was ſtamped; or ſhall ſell and deliver any chocolate, whereof the thread or ſtamped label incloſing the ſame ſhall have been broken or opened; he ſhall forfeit 20 l. *ſ.* 17.

And if any perſon ſhall counterfeit the ſaid ſtamp, or ſhall knowingly ſell any chcocolate with a counterfeit ſtamp; or ſhall, on chocolate, for which no entry hath been made, nor the duties paid, fix any paper with the ſtamp on; he ſhall forfeit 500 l. and be committed to the next county gaol for twelve months. 10 *G. c.* 10. *ſ.* 22. 11 *G. c.* 30. *ſ.* 13.

And if any ſtamped chocolate ſhall be damaged, the owner may in preſence of an officer open it, and deliver the ſtamps to the officer, and work it over again with freſh cocoa nuts, and have it reſtamped, paying duty for what is added. 11 *G. c.* 30. *ſ.* 14.

But on reworking chocolate, proof ſhall be made (before the commiſſioners within the bills, and before two juſtices elſewhere) that the duties for the cocoa nuts whereof it was made, and for thoſe alſo which are added, have been paid, and the chocolate entred. 11 *G. c.* 30. *ſ.* 15.

Chocolate made for private families.

24. If any perſon ſhall be minded to make chocolate for his own family, and not for ſale, and ſhall give notice thereof under his hand to the officer of the diviſion, three days before he begin to make, in which notice ſhall be ſpecified the quantity of cocoa nuts deſigned to be made into chocolate, the name of the perſon to be employed in the making, and the place where; in ſuch caſe the officer ſhall give a permiſſion under his hand for making the ſame, and the place ſhall not be liable in reſpect thereof to be ſurveyed. 10 *G. c.* 10. *ſ.* 23.

And

And the perſon for whom it is made, ſhall in three days after finiſhing, make entry on oath with the officer, of the whole quantity then made by virtue of ſuch permit, and bring the ſame wrapt up as before, to have it ſtamped, and ſhall pay the duty; and in default thereof, ſhall forfeit the ſame, and treble value. *ſ.* 24.

And no perſon ſhall be permitted to make into chocolate for his own private uſe, leſs than half a hundred weight of cocoa nuts at a time. *ſ.* 25.

Penalty of retailing the ſame without a permit, or pedlars with one.

25. And if any perſon ſhall offer any tea to ſale, not having a permit; or if any pedlar, or other trading perſon, going from town to town, or other mens houſes, and trading either on foot, or with any horſe or other cattle, or otherwiſe, ſhall offer any ſuch tea to ſale, altho' he have a permit; the perſon to whom it is offered to ſale, may ſeize and detain the ſame and carry it to the next warehouſe belonging to the cuſtoms or exciſe, and bring the perſon before a juſtice of the peace to be by him committed to priſon, and proſecuted for the penalties incurred for ſuch offence; and ſuch tea may be proſecuted in the name of the perſon who ſtopped or ſeized the ſame, in like manner as if it had been ſeized by an officer. 9 *G.* 2. *c.* 35. *ſ.* 20.

And none of the ſaid goods above ſix pounds weight, ſhall be removed or carried from one part of the kingdom to another, without a permit ſigned by an officer, ſignifying the names and places of abode of the buyer and ſeller, and the quantity and ſpecies of the goods, and that the duty hath been paid, or the cocoa nuts entred as aforeſaid, or that they have been condemned as forfeited; on pain of forfeiting the ſame, together with the caniſters, bags, or other package: Which permit ſhall be left with the officer of the diviſion to which the ſame ſhall be carried, to prevent the ſeizure thereof; in which permit ſhall be expreſſed the time for which it ſhall continue in force. 10 *G.* *c.* 10. *ſ.* 16.

And if any perſon ſhall take out a permit for removing coffee, tea, or cocoa nuts, and ſhall not ſend away the goods within the time limited, nor return the permit, he ſhall forfeit treble value; and if there ſhall not appear a ſufficient decreaſe made in the ſtock to anſwer the quantity in the permit, the officer may ſeize ſo much of the ſaid ſtock as forfeited, as will anſwer the ſaid quantity in the permit: But no perſon ſhall receive a permit, without the direction in writing of the perſon (or his ſervant) from whoſe

whose stock the goods are to be removed; on pain of 50 l. and in default of payment, he shall be imprisoned three months. 11 *G. c.* 30. *s.* 10.

26. All sellers and dealers in any the said goods, and all makers of chocolate, and coffee or chocolate housekeepers, who shall consume the same in small quantities under six pounds, shall keep an account of all coffee, tea, chocolate, and cocoa nuts which they shall consume in each day; and every night enter in a book an account of the gross quantities retailed by them under six pounds; and shall keep another book wherein they shall enter each parcel above six pounds, which they shall sell in each day, which shall not be removed without a permit from the officer, expressing the quantity and quality, and the name of the seller and buyer, and where it is to be carried, and that the duties were paid, or the cocoa nuts entred, or that they were condemned as forfeited; which books shall be prepared by the commissioners, and by them delivered on demand to such sellers and dealers; and when the books shall be filled up, they shall be returned to the officer upon oath of the truth of the entries; and the said book shall from time to time lie open, and be perused by the officer: And if such seller or dealer shall omit his duty in regard to the said books, he shall forfeit 100 l. 10 *G. c.* 10. *s.* 35. Account to be kept of small quantities consumed.

But by the 12 *G. c.* 28. No dealer in cocoa nuts shall dispose of less then 28 pounds at a time, and then shall enter in writing the name and place of abode of the person to whom sold, and on demand shall produce such account to the officer; on pain of 20 l. for each pound of cocoa nuts otherwise disposed of, and of 20 l. for default about the entry. *s.* 29.

27. All the said penalties and forfeitures shall be recovered and mitigated as by the laws of excise or in the courts at *Westminster*; and be employed half to the use of the king, and half to the informer. 10 *G. c.* 10. *s.* 41. 11 *G. c.* 30. *s.* 39. 4 *G.* 2. *c.* 14. *s.* 10. 18 *G.* 2. *c.* 26. *s.* 14. 24 *G.* 2. *c.* 40. *s.* 33. Power of the justices.

And by the 12 *G. c.* 28. The penalties on the said act shall be recovered as by the laws of the customs or excise respectively. *s.* 33.

28. And on disputes whether the duties have been paid, the proof shall lie on the claimer, and not on the officer. 10 *G. c.* 10. *s.* 28. Proof to lie on the claimer.

29. The commissioners shall cause all tea and coffee seized in *London*, and condemned, to be sold there; and if seized elsewhere, they shall cause it after condemnation to be Condemnation and sale.

be brought and ſold in *London*. 12 *G. c.* 28. *ſ.* 1. Or, after having been firſt valued by ſworn valuers, they may be ſold where the commiſſioners ſhall think proper. *ſ.* 16.

But if they think fit, they may cauſe ſuch tea as cannot be ſold for 5 s. a pound, to be burnt or otherwiſe deſtroyed; and the perſon making ſeizure, to be rewarded as they ſhall think proper, not exceeding 1 s. 6 d. for each pound of ſuch tea. *ſ.* 3.

Reward. 30. But no officer of the cuſtoms, or other perſon, ſhall be intitled to any reward for any ſeizure of the ſaid goods, unleſs he give notice of the ſeizure to the next officer of exciſe, or ſuperviſor, in 48 hours; who ſhall on ſuch notice, take an account of the ſpecies and quantity; nor ſhall ſuch goods be removed without a permit from ſuch officer of exciſe, on pain of reſeizure. 12 *G. c.* 28. *ſ.* 6.

Utenſils liable. 31. All ſtock and utenſils found in the ſhops or other places aforeſaid, ſhall be liable to the duties and forfeitures. 18 *G.* 2. *c.* 26. *ſ.* 8.

V. Glaſs.

Duty on importation. 1. By the 19 *G.* 2. *c.* 12. Certain additional duties are laid upon glaſs imported, over and above what it ſhall pay by the 2 *W. ſeſſ.* 2. *c.* 4. and by the book of rates of the 12 *C.* 2. which ſhall be under the management of the commiſſioners of the cuſtoms *ſ.* 2, 8.

Inland duty. 2. Moreover, there ſhall be paid a duty of 9 s. 4 d. a hundred weight upon all materials, metal, or other preparation for making of crown, plate, and flint glaſs, and all white glaſs; and of 2 s. 4 d. a hundred weight, upon all materials for making common bottles, and all other green glaſs: To be paid by the maker; and to be under the managemnet of the commiſſioners of exciſe. *ſ.* 4, 5, 6, 9.

Place of making to be entred. 3. In order whereunto, every maker of glaſs ſhall firſt make entry in writing at the next exciſe office, of his name, and of all his furnaces, pots, pot chambers, warehouſes, rooms, and other places for making or keeping of glaſs, or of materials for making it; and if he ſhall uſe the ſame, without firſt giving notice to the proper officer, he ſhall forfeit 50 l. *ſ.* 10.

Notice of beginning to work. 4. And he ſhall, before he begin to fill any pot, give 12 hours notice in writing to the officer, of the time and hour when he intends to begin, with an account of the weight of the materials, and the ſpecies of glaſs to be made; on pain of 50 l. *ſ.* 11.

And

And if the filling be not begun pursuant to such notice, the said notice shall be void. *s.* 12.

5. The officer shall be permitted at all times, by day or night, to enter into the workhouse, warehouse, or other place for making of glass; and to weigh and take account of the quantity of materials; and shall make report thereof to the commissioners or whom they shall appoint, leaving a copy (if demanded) under his hand, for the glass maker; and if he shall not leave such copy on demand, he shall forfeit 40*s.* *s.* 13. Officer to enter and survey.

And if any person shall obstruct any officer in the execution of his duty on this act; he shall forfeit 50*l.* *s.* 16.

6. And the maker shall keep scales and weights at the place where the glass is made, and assist the officer in weighing; on pain of 50*l.* *s.* 14. Maker to keep scales and weights.

7. Every maker within the bills shall monthly, and elsewhere, once in six weeks, make entry in writing at the next excise office, of the quantities of the materials used in each making, on pain of 20*l.* which entries shall be made on oath before the commissioners within the bills, and elsewhere before the collector or supervisor. *s.* 17. Entry of glass made.

But no maker shall be obliged to go further than the market town where it is made, or the next market town, for the making such entries. *s.* 18.

8. The maker, within the bills, shall in four weeks, and elsewhere in six weeks after entry, pay off the duties; on pain of double duty. *s.* 19. Payment of the duty.

9. If any pot filled with materials shall crack or break, whereby any part thereof shall become unfit for service, on proof thereof to the commissioners where such glass house shall be situated, they shall make an allowance for the same. *s.* 15. Allowance for glass spoiled in making.

10. Any person who hath paid the duty may export the glass, and have the duty drawn back; and if it shall be relanded, it shall be forfeited, or the value thereof, over and above the penalty of the bond given on exportation. *s.* 20, 21, 22. Exportation.

And no glass shall be imported into *Ireland*, other than the manufacture of *Great Britain*; on pain of forfeiting the same, and the ship, and 10*s.* a pound. *s.* 23.

The like penalty for exporting glass out of *Ireland*. *s.* 24.

11. The penalties to be recovered or mitigated as by the laws of excise, or in the courts at *Westminster*; and to be employed, half to the use of the king, and half to him that shall sue. *s.* 39. Power of the justices.

VI. Hops.

Duty on hops imported.

1. By the 9 *An. c.* 12. an additional duty of 3d. a pound is laid on all hops imported, over and above all other duties; which shall be under the management of the officers of the customs. *s.* 1, 2, 3, 4.

And if any foreign hops shall be landed before entry and duty paid, or without warrant for landing; the same shall be forfeited, and burnt in ten days after condemnation, and the ship also shall be forfeited, and the person concerned in importing, or aiding in putting them on shore, shall forfeit 5l. a hundred weight. 7 *G.* 2. *c.* 19. *s.* 1.

Duty on hops grown in Great Britain.

2. And by the said act of the 9 *An. c.* 12. there shall be paid a duty of 1d. for every pound of hops grown in *Great Britain*, cured and made fit for use; the same to be paid by the owner within six months after they shall be cured and put into bags; which duty shall be under the management of the commissioners and officers of excise. *s.* 1, 5.

Hop grounds to be entred.

3. In order whereunto, every person who shall plant or have growing any hops, for sale or not for sale, shall yearly on or before *Aug.* 1. give or send notice in writing under his hand, at the next office of excise, or to the officer of the district, of all the hop grounds in his possession, and of the name of the parish, township, or place, and the name of the owner or occupier; on pain of 40s. an acre. 9 *An. c.* 12. *s.* 6.

But such person shall not be obliged, for giving notice, to go further than the next market town. *s.* 7.

And the officer who shall receive the notice, shall in five days enter the same in a book to be kept at the office for that purpose; on pain of 40s. *s.* 7.

Places of curing and keeping to be entred.

4. Also no person shall use any oust, storehouse, or other place, or any kiln for curing or keeping of hops, unless notice thereof shall have been given, on pain of 50l. 9 *An. c.* 12. *s.* 8.

And all hops shall in six weeks after gathering, be brought to be cured and bagged at such ousts or places notified, and no other; on pain of 5s. a pound. *s.* 9.

Officer to enter and survey.

5. The officer shall at all times, by day or night, and if in the night in the presence of a constable, be permitted on his request to enter into the oust, storehouse, or other place, used by any person for growing, curing, or keeping of hops; and if the planter or owner shall obstruct him, he shall forfeit 20l. 9 *An. c.* 12. *s.* 15.

6. The

6. The owners of hops, before they reſpectively begin to bag or weigh their hops, ſhall ſend notices in writing under their hands to the next exciſe office or officer, of the day and hour when they intend to begin either to bag or to weigh; which notice, as to ſuch as ſhall be bagged or weighed the firſt week, ſhall be given 24 hours before; and as to every other bagging or weighing, 48 hours; on pain of 50l. 6 *G. c.* 21. *ſ.* 25. Notice of bagging and weighing.

7. And the exciſe officer ſhall attend at the bagging of every parcel of hops, and at the weighing thereof, and ſhall cauſe the weight (the tare of the bag being abated) to be marked on every bag; and ſhall cauſe an entry of the ſaid weight to be made in his book; and ſhall make return thereof in writing to the commiſſioners or whom they ſhall appoint, leaving a true copy (if demanded) of ſuch return under his hand with the planter or owner; and if he ſhall neglect or refuſe to leave ſuch copy (after demand in writing, 12 *G. c.* 28. *ſ.* 30.) he ſhall forfeit 5l. 9 *An. c.* 12. *ſ.* 11. Officer to attend at the bagging and weighing.

And the allowance ſhall be made after the rate of ten pounds *per centum*, upon the weight of every bag, for the tare thereof. *ſ.* 13.

8. The owners ſhall keep at their ouſts, ſtorehouſes, and places of keeping their hops, weights and ſcales; and permit the officer to uſe them; and ſhall not ſuffer any falſe weights to be uſed; on pain of 20l. 6 *G. c.* 21. *ſ.* 26. Owner to keep ſcales and weights.

9. The owners may, if they think fit, put the hops into caſks, inſtead of bags; giving the like notice, and being ſubject to the ſame regulations, for caſking as for bagging. 6 *G. c.* 21. *ſ.* 27, 28. Hops may be put into caſks inſtead of bags.

And the officer ſhall cauſe the caſk to be weighed, and the weight to be marked on the caſk, and alſo the weight of the hops therein. *ſ.* 28.

10. No perſon ſhall take any hops of foreign growth out of the bags in which they are imported, and rebag the ſame in *Britiſh* bagging, in order to ſell or export them as *Britiſh* hops; on pain of 10l. a hundred weight: And if any perſon ſhall endeavour to defraud the king of the duty, by uſing twice or oftner the ſame bag, with the officer's mark thereupon; he ſhall forfeit 40l. 9 *An. c.* 12. *ſ.* 23. Deceit in bagging.

11. No planter or owner ſhall (on pain of 50l.) remove from his ouſt, ſtorehouſe, or other place, any hops, until they have been cured, bagged, and weighed, and the duties aſcertained; unleſs where the officer after no- Removal before bagging.

tice, shall not attend the bagging and weighing. 9 *An. c.* 12. *s.* 16.

Concealing.

12. If any planter or owner shall conceal any hops, to avoid the duties; he shall forfeit 20 *l.* and the hops concealed. 9 *An. c.* 12. *s.* 17.

Privately conveying.

13. And if any gatherer of hops, or other person, shall privately convey any hops from the place of growing, or where they shall be put in order to be cured, bagged, and weighed, with intent to defraud the king and the owner; he shall forfeit 5 *s.* a pound. 9 *An. c.* 12. *s.* 18.

Payment of the duties.

14. The planter or owner shall in six months after the hops shall be cured, bagged, or weighed, pay off the duties; on pain of double duty, two thirds to the king, and one third to the informer. 9 *An. c.* 12. *s.* 14.

Adulterating hops.

15. If any person shall mix with hops any drug or ingredient to alter the colour or scent; he shall forfeit 5 *l.* a hundred weight. 7 *G.* 2. *c.* 19. *s.* 2.

Using other things instead of hops.

16. No common brewer, inn-keeper, or victualler shall use any broom, wormwood, or any other bitter ingredientt, to serve instead of hops; on pain of 20 *l.* (Except the infusing of broom or wormwood into beer or ale by the retailer, after it is brewed and tunned, to make it broom or wormwood ale or beer.) 9 *An. c.* 12. *s.* 24.

Exportation.

17. Hops which have daid the duty, may be exported to Ireland. 9 *An. c.* 12. *s.* 21.

But there shall be no drawback of the duties. 6 *G. c.* 11. *s.* 40.

And no foreign hops, other than of *British* growth, shall be landed in Ireland. 7 *G.* 2. *c.* 19. *s.* 1.

Penalties how to be recovered.

18. The penalties aforesaid (where not otherwise directed) shall be recovered and mitigated as by the laws of excise, and distributed half to the king, and half to him that shall sue. 9 *An. c.* 12. *s.* 26. 24 *G.* 2. *c.* 40. *s.* 33.

Hops liable to distress for the duties and penalties.

19. And all hops in the custody of any planter or owner, or person in trust for him, shall be liable to the duties in arrear, and to the penalties; in the same manner as if the debtor or offender were the lawful owner. 9 *An. c.* 12. *s.* 19.

Cutting hop-binds.

20. If any person shall unlawfully and maliciously cut any hop binds growing on poles, in any plantation of hops; he shall be guilty of felony, without benefit of clergy. 6 *G.* 2. *c.* 37. *s.* 5, 6.

Which offence is treated of more at large in the title Black Act.

VII. Leather.

1. By the 4 *W.* *c.* 5. and 9 *An.* *c.* 11. and 10 *An.* *c.* 26. certain additional duties are laid on all hides, ſkins, vellum, and parchment imported, over and above what they are charged in the book of rates: which ſhall be under the management of the commiſſioners of the cuſtoms. Duty on leather imported.

And after the duty ſhall be paid on importation, the officers of the cuſtoms ſhall cauſe every hide or ſkin to be marked, to denote the payment of the duty. 9 *An.* *c.* 11. *ſ.* 6.

2. And by the ſaid acts of 9 *An.* *c.* 11. and 10 *An.* *c.* 26. certain duties are impoſed on hides and ſkins, tanned, tawed, or dreſſed in *Great Britain*; and on vellum and parchment made in *Great Britain*; as follows: Duty on leather dreſſed in Great Britain.

On all tanned hides 1½d. a pound.

Calf, kips, hogs, and dog ſkins tanned 1½d a pound.

Goat ſkins tanned with ſhomack, or ortherwiſe, to reſemble *Spaniſh* leather, 4d. a pound.

Sheep ſkins tanned for roans after the nature of *Spaniſh* leather, 2d. a pound.

Sheep ſkins and lamb ſkins tanned for glovers and bazils 1½d. a pound.

Tanned ſkins not before charged 30l. in the hundred, according to the real value.

All the above to be paid by the tanner.

Horſe hides dreſſed in allum and ſalt or meal, or otherwiſe tawed, 1s. 6d. a hide.

Hides of ſteers, cows, and all other (except horſe hides) dreſſed in allom and ſalt, or meal, or otherwiſe tawed, 3s. a hide.

Calve ſkins and kips dreſſed in allom and ſalt or meal or otherwiſe tawed. 1½d. a pound.

Slinks ſo dreſſed or tawed, with the hair on, 3s. a dozen.

Slinks ſo dreſſed or tawed, without hair, 1s. a dozen.

Dog ſkins ſo dreſſed or tawed, 1s. a dozen.

Buck and doe ſkins (except what paid the duty on importation) dreſſed in allom and ſalt or meal, or otherwiſe tawed, 6d. a pound.

Kid ſkins ſo dreſſed or tawed (except what paid the duty on importation) 1s. a dozen.

Goat ſkins ſo dreſſed or tawed, 2s. a dozen.

Beaver skins so tawed, 2s. a dozen.

Sheep skins and lamb skins so dressed or tawed, 1½d. a pound, and no more, altho' they may have been dipped or steeped in the tanner's wooze made of bark or shomack before such dressing (3 *G. c.* 4. *s.* 13.)

All other tawed skins not before charged, 30l. for every 100l. value.

To be paid by the tawers or makers.

For hides and skins dressed in oil, 6d. a pound.

Deer, goat, and beavers skins, dressed in oil, 6d. a pound.

Calve skins dressed in oil, 8d. a pound.

Sheep and lamb skins dressed in oil, 3d. a pound.

All skins dressed in oil, not before charged, 15l. in the hundred, according to the real value.

To be paid by the oil leather dressers.

For all vellum made in *Great Britain*, 3s. a dozen.

Parchment made in *Great Britain*, 1s. 6d. a dozen.

But such small pieces as have been commonly called pates and tails, and are tanned after they are cut off from the hides, shall not be charged with the duty by weight, but with the duty *ad valorem*; and the same need not to be marked as is hereafter directed. 9 *An. c.* 11. *s.* 46.

What is meant by hides tanned, dressed in oil, and tawed.

3. By *tanned* hides or skins, or pieces thereof, are meant only such as are tanned in wooze made of the bark of trees or shomack; and by hides and skins *dressed in oil*, are meant such as are made into leather in oil, or with any materials whereof the chiefest ingredient shall be oil; and by *tawed* hides or skins, are meant such as are dressed or made into leather in allom and salt, or meal, or other ingredients properly used by the tawers of white leather. 9 *An. c.* 11. *s.* 3.

Who shall be deemed tawers or dressers.

4. Collar makers, glovers, bridle cutters, and others who dress skins or hides, or pieces thereof, in oil, allom and salt, or meal, or other ingredients, and who cut and make the same into wares, shall be accounted tawers or dressers. 9 *An. c.* 11. *s.* 28.

Duty ad valorem how to be ascertained.

5. The value of the said hides and skins which are to pay *ad valorem*, shall be as they are worth to be sold at the next market, without respect to the duty; and the collector shall receive the duties, on the oath of such tanner, tawer, or dresser. 9 *An. c.* 11. *s.* 14.

6. Any

6. Any hide or skin which hath once paid the duty shall not be charged under any other denomination. 9 *An.* *c.* 11. *s.* 3. No leather to be twice charged.

7. The commissioners of the treasury shall appoint commissioners of these duties; who shall have the same power as the commissioners of the excise. 9 *Ann.* *c.* 11. *s.* 13, 38. Officers for these duties.

8. Tanners, tawers, curriers, or dressers of hides or skins, and makers of vellum or parchment, shall give notice in writing to the officer, of their names and places of abode, and of their tanhouses, yards, workhouses, mills, or other places, where they intend to tan, taw, or dress hides or skins, or make vellum or parchment, before they use the same; on pain of 50l. 9 *An.* *c.* 11. *s.* 15. Places of working to be entred.

And if any person shall not make such entry, or shall use any private tan yard, workhouse, pit, fat, mill, or place, he shall forfeit 20l. and the goods found in such private tan yard or place not entred, or the value thereof, shall also be forfeited. 9 *An.* *c.* 11. *s.* 17.

9. The officers at all seasonable times, in the day time, may enter into any tan yard, workhouse, warehouse, mill, or other place; and if the owner or occupier shall refuse him entrance, he shall forfeit 10l. 9 *An.* *c.* 11. *s* 17. Officers to enter and survey.

10. The said tanners and others shall give notice to the officer, of their places for drying and keeping of hides or skins, vellum or parchment, and they shall give two days notice in writing to the officer, before they take the said goods out of the mill, wooze, liquor, oil, or other materials, in order to be dried; and they shall permit the officers to take an account; and shall in two days after the taking out of the wooze, mill, liquor, or other materials, and before the carrying away of the said goods from the place of drying, make entry with the officer of the number and quality, and verify the same on oath, to be administred by any justice of the peace, or collector or supervisor; and they shall not remove any of the said goods, from the place of drying, until the duty be first charged, entred, and marked. 9 *An.* *c.* 11. *s.* 16. Notice of removing to the place of drying.

And if any person shall not send such notice of taking the goods out of the wooze or other materials, or not make due entries, or remove any the said goods contrary to this act; he shall forfeit 20l. and also such goods unlawfully removed, or the value thereof shall be forfeited. *s.* 17.

11. And if any tanner or other such person shall conceal any hide or skin, vellum or parchment, or any part thereof; Concealing to avoid the duty.

thereof; he shall forfeit 20l. and also the goods concealed, or the value thereof. 9 *An. c.* 11. *s.* 17.

Tanners to keep scales and weights.

12. Tanners, and other the said persons, shall keep scales and weights; and sworn officers shall be appointed, for the weighing and other matters to be performed at every such yard or dressing place. 9 *An. c.* 11. *s.* 18.

And if he shall not keep just scales and weights, or shall not permit his hides or skins to be weighed, or neglect or refuse to bring the scales, or to assist at the weighing; he shall forfeit 50l. *s.* 26.

Duty to be ascertained before removal.

13. Tanners, and other the said persons, shall before any the said goods be removed from the place of dressing, drying, or keeping, give two days notice in writing to the officer (for giving of which notice he shall not be obliged to go further than the next market town); and shall permit the officer to weigh the goods chargeable by weight, and bring the scales, and assist in weighing; and shall permit the officer to take an account of the number and quality of the goods to be charged by tale; and shall ascertain the value of such goods as are to be charged *ad valorem*, by his oath to be taken before the said officer, or a justice of the peace. 9 *An. c.* 11. *s.* 19.

Charge by the officer.

14. And after the duties are ascertained by weight, tale, or value respectively, the officer shall enter the same in a book, and make return thereof to the commissioners or whom they shall appoint, leaving a true copy thereof under his hand, with such tanner or other person. 9 *An. c.* 11. *s.* 20.

Leather to be marked.

15. Immediately after the duty shall be ascertained, and entry thereof made, the officer shall cause every hide or skin, and every piece of a hide or skin, and all vellum and parchment, to be marked. 9 *An. c.* 11. *s.* 21.

In what part to be marked.

16. And if such tanner or other person shall desire the mark to be made, on any particular part of the hide or skin; the officer shall mark it accordingly. 9 *An. c.* 11. *s.* 22.

Removing before mark, &c.

17. And if any tanner, or other such person, shall remove from his yard or drying place any the said goods, before the duties shall be charged, and before they be marked; or if any buyer shall carry away the same before they be marked; he shall forfeit 50l. and the said goods so unlawfully sold or removed, shall also be forfeited. 9 *An. c.* 11. *s.* 26.

Counterfeiting the stamp.

18. And if any person shall counterfeit the stamp, or knowingly sell any the said goods with a counterfeit stamp;

ſtamp; he ſhall be guilty of felony without benefit of clergy. 9 *An. c.* 11. *ſ.* 44.

19. And to prevent frauds between the officers and tradeſmen, all tanners, tawers, and dreſſers of hides, ſkins, vellum, and parchment, ſhall keep thoſe which have not been ſtamped, from thoſe which have, and alſo thoſe which have been laſt ſtamped, from thoſe which have been ſtamped before, for 24 hours within the bills, and for two days elſewhere; unleſs they ſhall have ſooner been weighed and taken account of by the ſurveyor or ſupervisor: on pain of 10l. 5 *G. c.* 2. *ſ.* 10. Leather ſtamped to be kept ſeparate.

20. And they ſhall not remove the ſame for 24 hours from the ſtamping thereof, unleſs the ſame ſhall ſooner have been weighed by the ſupervisor or ſurveyor, that ſo they may have an opportunity to re-weigh the ſame after the inferior officers: And if any additional weight ſhall be found; the ſaid hides, or ſkins, and pieces thereof, ſhall be charged accordingly. And if ſuch tanner, tawer, or dreſſer ſhall remove, or cauſe or ſuffer the ſame to be removed contrary hereunto; he ſhall forfeit 20l. 5 *G.* 3. *c.* 43. *ſ.* 21. And not to be removed till after 24 hours.

And he ſhall keep ſcales and weights for ſuch re-weighing; and bring the hides and ſkins and pieces thereof to the ſcales; and aſſiſt the ſurveyor and ſupervisor in re-weighing, and in examining from time to time the depending ſtock of ſuch tanner, tawer, or dreſſer; on pain of 50l. *ſ.* 22.

21. Perſons within the bills of mortality ſhall pay off the duties in 14 days to the commiſſioners, and elſewhere in ſix weeks to the collectors, after the ſaid goods ſhall be marked. 9 *An. c.* 11. *ſ.* 23. Payment of the duties.

But no perſon ſhall be obliged, for payment of the duties, to go farther than the next market town. *ſ.* 24.

And perſons not paying as aforeſaid ſhall forfeit double duty; and ſhall not deliver out any of the ſaid goods until the duty be paid, on pain of double value. *ſ.* 25.

22. Every tanner, and other ſuch perſon, ſhall once in three months (if demanded) make an account with the officer, of the goods taken out of the wooze or other ingredients, and of his entries thereof, and balance the ſaid account by the goods which have been charged, and thoſe which are in his poſſeſſion unmarked and un-charged; on pain of 50l. 9 *An. c.* 11. *ſ.* 27. Tanners to balance accounts with the officers.

23. On exportation of hides or ſkins, tanned, tawed, or dreſſed, and marked, and of boots, ſhoes, gloves, or other manufactures made of leather, chargeable for the duty Exportation.

duty by weight; a drawback shall be allowed of two thirds of the duty. 9 *An. c.* 11. *s.* 39. 12 *An. st.* 2. *c.* 9. *s.* 65.

Except that for tanned leather manufactured into boots, shoes, gloves, and other wares; a drawback of $1\frac{1}{2}d.$ for a pound weight, shall be allowed in lieu of the said two thirds of the duty. 12 *An. st.* 2. *c.* 9. *s.* 64.

Penalties how recoverable.

24. Any two justices residing near, may hear and determine offences; who shall on information or complaint in three months after seizure made, or offence committed, summon the party accused, and the witnesses, and on appearance or contempt of the party (on proof of notice given) shall examine witnesses on oath, and give judgment, and issue warrants for levying the pecuniary penalties by distress and sale (if not redeemed in six days). 9 *An. c.* 11. *s.* 36.

Mitigation.

25. And they may mitigate the penalties, the charges of the officers being always allowed over and above the mitigation; and so as the mitigation do not reduce the penalties to less than one fourth part, over and above the charges. 9 *An. c.* 11. *s.* 37.

Appeal.

26. Persons aggrieved may appeal to the next sessions, who may determine the same, and issue warrants for levying the penalties. 9 *An. c.* 11. *s.* 36.

Certiorari.

27. And no certiorari shall be allowed. 9 *An. c.* 11. *s.* 47.

VIII. Linen cloth, and silks.

Duty on importation.

1. By the 10 *An. c.* 19. and the 12 *An. st.* 2. *c.* 9. There shall be paid for all chequered and striped linens, and upon all linens printed, painted, stained, or dyed, after the manufacture, or in the thread or yarn, in any foreign parts, which shall be imported, and may lawfully be worn, over and above other duties, 30*l.* for every 100*l.* value; which shall be under the management of the commissioners of the customs.

Except lawns, striped or chequered linens, being all white, and neckcloths striped at the end only, and also barras, or packing canvas, and buckrams. 12 *An. st.* 2. *c.* 9. *s.* 5. 12 *An. st.* 2. *c.* 19.

And after the duty is paid, the said printed linens imported shall be stamped by the officers of the customs. 10 *An. c.* 19. *s.* 68.

And by the 7 *G.* 3. *c.* 28. certain additional duties on importation are imposed; viz. For every ell of linen cloth

or

or ſheeting above one yard wide (except Flanders Holland cloth) 3d.; and for every ell of linen cloth called Drilling, 3d.

And by the 7 *G.* 3. *c.* 58. for every ell of foreign linen called Packing canvas, Spruce Elbing, or Queenſborough canvas, one farthing; for every ell of Dutch barras and Heſſin canvas, one halfpenny; and for every yard of foreign lawns bleached in Holland, commonly called Holland whited lawn, one penny.

2. By the 10 *An.* *c.* 19. and the 12 *An.* *ſt.* 2. *c.* 9. Home duties. Over and above the duties payable on importation of any of them, there ſhall be paid, for all *ſilks* printed, ſtained, or painted in *Great Britain*, (ſilk handkerchiefs excepted) 12d. a yard in length, reckoning half a yard for the breadth. (And by the 7 *G.* 3. *c.* 47. Whereas doubts have ariſen whether ribbands and ſilks ſo printed, ſtained, or painted, being leſs than half a yard in breadth, are within the meaning of the ſaid acts; it is declared, that all ribbands and ſilks printed, ſtained, or painted in Great Britain, tho' leſs than half a yard in breadth, are within the meaning thereof, and liable to the ſaid duties, according to the proportions in which ſuch ribbands and ſilks are made. *ſ.* 6.)

And for all *ſilk handkerchiefs* ſo printed, ſtained, or painted in *Great Britain*, 4 d. a yard ſquare.

And for all *callicoes* printed, ſtained, painted, or dyed in *Great Britain*, 6 d. for every yard in length, reckoning, one yard wide, or within one eighth thereof.

And for all *linen* ſtuffs printed, ſtained, painted, or dyed in *Great Britain*, 3 d. a yard in length, reckoning, yard wide.

Except ſuch callicoes, linens, and fuſtians as ſhall be dyed throughout of one colour only, and ſtuffs made of woollen, or whereof the greateſt part in value ſhall be woollen.

3. But it is to be obſerved, that ſuch painted or ſtained callicoes cannot be of uſe for wearing apparel, and therefore the printing or ſtaining of them muſt be chiefly in order for exportation; for by the 7 *G.* *ſt.* 1. *c.* 7. it is enacted, that no perſon ſhall uſe or wear in any apparel, any printed, painted, ſtained, or dyed callico; on pain of 5 l. to the informer, on conviction on the oath of one witneſs before one juſtice; who ſhall, on information on oath in ſix days after the offence, ſummon the party, and upon his appearance or contempt examine the matter, and on proof by confeſſion, or oath of one witneſs determine the Obſervation as to callicoes.

ſame, and on conviction cauſe the penalty to be levied by diſtreſs and ſale, rendring the overplus (charges of diſtreſs and ſale being firſt deducted): Provided that perſons aggrieved may appeal to the next quarter ſeſſions, giving ſix days notice. *ſ.* 1.

And if any perſon ſhall offer the ſame to ſale, or any houſhold furniture made up of or mixed therewith, unleſs for exportation; he ſhall forfeit 20 l. half to the informer, and half to the poor of the pariſh or place where the offence ſhall be committed, to be recovered in the courts at *Weſtminſter*, with full coſts, on proſecution in ſix months; and if he is a ſteward or other officer of a corporation, he ſhall alſo forfeit his office. *ſ.* 2, 4.

And no perſon ſhall uſe the ſame in any houſhold furniture, on like pain of 20 l. *ſ.* 3.

But this ſhall not extend to callicoes made up in houſhold furniture before *Dec.* 5. 1722. *ſ.* 6.

Nor to callicoes dyed all blue. *ſ.* 11.

But the ſame ſhall entend to ſtuff made of cotton, or mixed therewith, printed or painted; and to callico chequered or ſtriped; and to callico ſtitched or flowered in foreign parts with any colour (muſlins, neckcloths, and fuſtians excepted). *ſ.* 10.

But it ſhall be lawful to uſe ſtuff made of linen yarn and cotton wool manufactured and printed or painted in Great Britain, provided the warp thereof be entirely linen yarn. 9 *G.* 2. *c.* 4.

Houſes to be entred.

4. Every ſuch printer, painter, ſtainer, or dyer ſhall give notice in writing at the next office, of his name and place of abode, and where he intends to work; on pain of 30 l. 10 *An. c.* 19. *ſ.* 71.

And by the 1 *G. ſt.* 2. *c.* 36. Where any perſon ſhall take upon him to print, paint, ſtain, or dye any ſilks, linens, or ſtuffs at any other place than the place of his uſual reſidence or exerciſe of his trade; he ſhall firſt make entry with the officer of the diviſion, where he intends to do the ſame, and pay down the duties, on pain of 50 l. and alſo the ſaid goods ſhall be ſeized and forfeited. *ſ.* 21.

Officers to enter and take account.

5. The officer ſhall at all times by day or night, and if by night in preſence of a conſtable, be permitted on requeſt to enter ſuch perſon's houſe, workhouſe, drying place, warehouſe, field, or other place uſed by him, and take an account, and ſhall make thereof a report in writing to the commiſſioners or to whom they ſhall appoint, leaving a copy if demanded, under his hand; and if he

ſhall

ſhall make default in leaving ſuch copy (after demand in writing, 12 *G. c.* 28. *ſ.* 30.) he ſhall forfeit 40 s. 10 *An. c.* 19. *ſ.* 75.

6. And none of the ſaid perſons ſhall obſtruct the officer in execution of his duty; on pain of 20 l. 10 *An. c.* 19. *ſ.* 78. Obſtructing the officer.

7. Every ſuch printer and other perſon, ſhall once in ſix weeks make entry in writing at the next office, on oath before the collector or ſupervisor, of all ſuch goods by them made, containing the kinds and quantity, and the names and places of abode of the owners (if they are not their own); on pain of 50 l. 10 *An. c.* 19. *ſ.* 72. Entry of goods made.

But no perſon ſhall be obliged to go to make entry further than the next market town. 10 *An. c.* 19. *ſ.* 73.

8. If the officer ſhall miſs any quantity of the ſaid goods, whereof he had taken an account in his laſt ſurvey, and ſhall not on reaſonable demand receive ſatisfaction what is become of the ſame; the officer may charge ſuch perſon with the duties of the goods ſo miſſing, as if they were printed, painted, ſtained or dyed. 10 *An. c.* 19. *ſ.* 77. Officer may charge for goods miſſing.

9. And if they ſhall conceal any the ſaid goods, to avoid the duty; they ſhall forfeit 20 l. And all the ſilks, callicoes, linens, and ſtuffs found in any private workhouſe, or other place whereof no notice hath been given, or the value thereof, ſhall be forfeited. 10 *An. c.* 19. *ſ.* 82. Goods concealed.

10. They ſhall, within ſix weeks after entry, clear off the duties; on pain of forfeiting double: and if they ſhall deliver out any ſuch goods, after default in payment of the duties, before the ſame ſhall be cleared off; they ſhall forfeit double value of the goods. 10 *An. c.* 19. *ſ.* 74. Payment of the duties.

11. And they ſhall not remove any the ſaid goods, till the officer hath taken account thereof, and until each piece be ſtamped or marked; on pain of 20 l. And the ſame ſo carried away without being marked, and found in the poſſeſſion of any draper or other perſon for his uſe, for ſale, may be ſeized or the value thereof recovered. 10 *An. c.* 19. *ſ.* 79. Removing before ſtamped.

12. And they ſhall keep the goods which have not been ſurveyed, ſeparate from the goods which have been ſurveyed; on pain of 5 l. 10 *An. c.* 19. *ſ.* 81. Goods ſurveyed to be kept ſeparate.

13. And

Search for goods unstamped.

13. And on oath by any credible person, that he hath reason to suspect, that any the said goods are in the possession of any draper or other person dealing therein, or of any other to his use, for sale, unstamped; the commissioners within the bills, or any two justices elsewhere, may issue their warrants, requiring some officer of the said duties (with a constable) in the day time to search for the same, and to open doors, chests, trunks, and package, and to seize such goods, and bring them to the next office. 10 *An. c.* 19. *s.* 98.

Goods found unstamped may be seized.

14. And if any the said goods shall be found in any place, on land or water (except on shipboard for exportation) without being marked with a stamp or seal, denoting that the duties have been paid or charged; the same shall be forfeited, and may be seized by any officer of the customs or excise, and the person in whose custody they are found shall forfeit 50 l. 5 *G. c.* 11. *s.* 15.

Counterfeiting the stamps.

15. And if any person shall counterfeit the stamp, he shall be guilty of felony without benefit of clergy. 10 *An. c.* 19. *s.* 97.

And if any person shall knowingly sell any the said goods with a counterfeit stamp, he shall forfeit 100 l. and be set in the pillory in some publick place two hours. *id.*

Exportation.

16. The said goods having paid the duty may be exported; and there shall be a drawback of the duties. 10 *An. c.* 19. *s.* 94, 95, 96. 12 *An. st.* 2. *c.* 9. *s.* 15.

Power of the justices.

17. The penalties (except as is above mentioned in relation to callicoes) may be sued for, levied, and mitigated as by the laws of excise, or in the courts at *Westminster*; and shall be employed half to the use of the king and half to him that shall discover, inform, or sue. 10 *An. c.* 19. *s.* 92. 24 *G.* 2. *c.* 40. *s.* 33.

Utensils liable.

18. And all the utensils and instruments for printing, painting, staining, or dying such goods, in custody of any the said persons, or any other to his use, shall be liable to all arrears of the duty, and to all penalties concerning the same, in like manner as if such person were the lawful owner. 10 *An. c.* 19. *s.* 83.

Cambricks and lawns to be marked by the excise officers.

19. By the 4 *G.* 3. *c.* 37. (which establisheth the corporation of the English linen company for making cambricks and lawns) it is enacted, that the commissioners of excise, where there shall be a manufactury of cambricks or lawns, or of goods known under that denomination, shall appoint the supervisor or other officer to seal the same; for which they shall have such fee as the commissioners shall appoint. *s.* 17, 18.

The

The manufacturer to give notice in writing to the officer, of the finishing of every piece, before it is taken out of the loom; who shall seal the same at both ends; on pain that such manufacturer taking the same out of the loom without having given such notice, and having the same sealed as aforesaid, shall forfeit 5 l. and every such piece shall be forfeited, and may be seized by any officer of the customs or excise. *s.* 19.

And the officer, with convenient speed, after notice, shall mark, and also number each piece; and make entry in writing, in books to be provided at the expence of the manufacturer, of the number set to each piece, the length thereof, and the number of threads in the warp; on pain of 10 l. *s.* 20.

If the officer shall mark any not made in England, or after the same is taken out of the looms; he shall forfeit 50 l. for each piece to him who shall sue, and forfeit his office, and be incapacitated to hold any other office of trust under the crown. *s.* 21.

If any person shall by bribery, or otherwise, prevail upon the officer to commit such offence, he shall forfeit 100 l. and stand in the pillory two hours; and if he shall offer any such bribe, he shall forfeit 50 l. *s.* 22.

And the officer shall yearly, in the month of June, transmit to the commissioners an account of all goods he shall have stamped, and a copy of the entries made; on pain of dismission: And he, or his executors, shall deliver up the seals, on demand from the commissioners; on pain of 200 l. *s.* 23.

Cambricks and lawns made in England, found unstamped, shall be forfeited, and may be seized by any officer of the customs or excise; and after condemnation shall be sold: And every person who shall sell or expose to sale, or have in his custody for that purpose, any cambricks or lawns made in England, unmarked, shall forfeit 200 l. *s.* 24.

But the said goods so seized, condemned, and sold, shall not be worn in this kingdom, but exported, and not be sold but upon condition of exportation; and shall not be delivered out of the warehouse, until bond be given, to the satisfaction of the collector, in double penalty of the goods, that the same shall be exported, and not relanded. *s.* 25.

If any person shall counterfeit the seal appointed by this act; or shall import any foreign cambricks or lawns, having such counterfeit mark thereon; or expose the same

ſame to ſale knowing the ſtamp thereon to be counterfeited; he ſhall be guilty of felony without benefit of clergy. *ſ.* 26.

All goods condemned in purſuance of this act, and all pecuniary forfeitures, (not herein otherwiſe directed,) ſhall be ſued for and recovered in any of his majeſty's courts of record at *Weſtminſter*, in the name of the attorney general, or of ſuch officer as aforeſaid; and be applied (after all charges deducted) half to the uſe of the king, and half to the officer or other perſon who purſuant to the directions of this act ſhall ſeize, inform, or ſue. *ſ.* 28.

And if any queſtion ſhall ariſe, where the goods were manufactured; the proof ſhall lie on the owner or claimer, and not on the officer. *ſ.* 31.

IX. Malt.

No malt to be imported.

1. By the 12 *An. ſt.* 1. *c.* 2. No malt ſhall be imported, on pain of forfeiting the ſame, and the value thereof. *ſ.* 26.

And if it is brought in from *Scotland* by ſea, it ſhall be entred at the port of landing, and pay the like duty as *Engliſh* malt, unleſs a certificate is produced that it hath paid the duty of 4½d. a buſhel in *Scotland*, and then it ſhall only pay 4½d. more, to make it equal with the *Engliſh*; and if it is brought by land, it ſhall be carried through *Berwick* or *Carliſle*, and there pay in like manner; on pain of forfeiting the ſame or the value thereof; and if it is carried beyond *Berwick* or *Carliſle*, without entry or payment, the officers of exciſe may ſeize the ſame. 33 *G.* 2. *c.* 7. *ſ.* 10. 1 *G.* 3. *c.* 3. *ſ.* 6.

Duty on malt.

2. By the 12 *An. ſt.* 1. *c.* 2. (which is continued yearly), and by the 33 *G.* 2. *c.* 7. there ſhall be paid by the maker for all malt made in *England* (except it be made for exportation only. 12 *G. c.* 4. *ſ.* 48.) a duty of 9d. a buſhel.

What ſhall be deemed a buſhel.

3. And every round buſhel with a plain bottom, 18½ inches wide throughout, and eight inches deep, ſhall be deemed a legal *Wincheſter* buſhel. 12 *An. ſt.* 1. *c.* 2. *ſ.* 7.

Officers for theſe duties.

4. The ſaid duty ſhall be under the management of the commiſſioners and officers of exciſe. 12 *An. ſt.* 1. *c.* 2. *ſ.* 3.

Places of making to be entred.

5. No perſon making malt (other than compounders) ſhall ſet up, alter, or uſe any ciſtern, uting fat, utenſil, or other veſſel, for the wetting or ſteeping barley or orher corn,

corn, or any kiln, floor, room, or other place for making or keeping of malt, without first giving notice in writing at the next office of excise; or shall keep or use any private cistern or other vessel for the wetting his barley or corn, other than such as are known and made use of in his common malting house, on pain of 50l. 12 *An. st.* 1. *c.* 2. *s.* 36.

Officer to enter and survey.

6. The officer shall in the day time be permitted, on request, to enter the house, malt house, and all other places belonging to or used by any maker of malt (*either for sale or not for sale*); and to gage all cisterns, uting fats, and other vessels used for wetting or steeping corn, and take account of the quantity; and shall thereof make return to the commissioners, or whom they shall appoint, leaving a copy with such matlster; and if any such maltster shall refuse to permit such officer, he shall forfeit 20l. 12 *An. st.* 1. *c.* 2. *s.* 4.

Or if he shall refuse or neglect (after demand in writing, 12 *G. c.* 28. *s.* 30.) to leave a copy of the gage for the maker, at the time of taking the gage; he shall forfeit 40 s. *s.* 31.

And by another clause in the said act, the officer shall on request be permitted, by night or by day, but if in the night then in presence of a constable, to enter the house, malt house, and other place belonging to or made use of by any maker of malt *for sale*, common brewer, innkeeper, victualler, distiller, or vinegar maker making malt, to gage and take an account of the corn wetting or wetted; and if such maker shall refuse to permit him, he shall forfeit 20l. *s.* 34.

Obstructing the officer.

7. And by a general clause in the 1 *G. st.* 2. *c.* 2. If any maker of malt for sale, shall obstruct any officer of excise, in the execution of any of the powers given him for securing the said duties, he shall forfeit 10l. *s.* 4.

Manner of gaging.

8. The officers shall measure corn making into malt, by the gage only, and not by the bushel. 12 *An. st.* 2. *c.* 2. *s.* 17.

Time for making.

9. No person shall make any barley malt (except in *June*, *July* and *August*) but that the same shall have in making thereof, that is in the fat, floor, steeping, and drying three weeks at least; nor in *June*, *July*, and *August*, but that it shall have 17 days at the least (unless it be for his own house): on pain of forfeiting for every quarter 2 s. half to the king, and half to him that shall sue: And the justices in sessions, and the steward in the leet, may hear and determine the same, as well by present-

ment of 12 men, as by accusation of information of two honest witnesses. 2 & 3 *Ed.* 6. *c.* 10. *s.* 2, 3, 4, 5.

Dressing of malt.

10. If any person shall put to sale any malt not well trodden, rubbed, and fanned, whereby there may be conveniently fanned out of one quarter half a peck of dust or more; he shall forfeit for every quarter 20 d. half to the king, and half to him that shall sue in like manner in the sessions or leet. 2 & 3 *Ed.* 6. *c.* 10. *s.* 3, 4.

Mixing bad malt with good.

11. No person (except it be for his own house) shall mingle any malt, not well made, or made of mow burnt, or spired barley with other good malt, and after put the same to sale; on pain to forfeit for every quarter 2 s. half to the king, and half to him that shall sue in like manner in the sessions or leet. 2 & 3 *Ed.* 6. *c.* 10. *s.* 2, 3, 4, 5.

And the bailiffs and constables of the town where malt shall be made, or put to sale, may search the same: And if they shall find it to be evil made or mingled with evil malt, they shall with the advice of one justice cause it to be sold to such persons, and at such reasonable prices, and under the common price of the market, as to him shall seem necessary and expedient. *s.* 4.

Pressing malt in the cistern.

12. If any corn, in any cistern, uting fat, or couch, steeping or steeped, in order to the making thereof into malt by any maltster (other than compounders) shall be found so hard, close, and compact, as it could not be, unless it had been forced together to prevent its swelling; every maltster and maker of malt (other than compounders) where the same shall be found, shall forfeit 5 s. a bushel; and proof being made thereof, the same shall be conclusive evidence of the fact, and subject the maltster to the penalty. 1 *G.* 3. *c.* 3. *s.* 17.

Mixing with corn of a former wetting.

13. No maker of malt (other than compounders) shall mix corn of one wetting with corn of a former wetting; or mix any of his couches or floors, with corn of a former wetting, before the same is put on the kiln for drying: on pain of 5 s. a bushel. 2 *G.* 2. *c.* 1. *s.* 11.

Mixing malt with unmalted corn.

14. If any dealer in malt, shall, with malt, fraudulently mix any unmalted corn, or sell or expose to sale any such mixture, or shall attempt to ship off any such mixture, in order to export the same; he shall forfeit 5 s. a bushel. 1 *G. st.* 2. *c.* 2. *s.* 13.

Mixing malt gaged with malt ungaged.

15. If any maltster shall fraudulently convey, or cause or suffer to be conveyed away, from the cistern, uting fat, or other wetting place or utensil, any steeping or part of any steeping of corn making into malt; and shall mix the same with any couch or floor of other corn making into

into malt, which is then depending and in operation, and which hath been gaged or charged with the duty in the couch, he shall forfeit 100 l. 1 *G.* 3. *c.* 3. *s.* 18.

Conceali g malt to avoid the duty.

16. If any maker of malt shall fraudulently conceal any malt from the view of the gager; he shall forfeit 10 s. a bushel. 12 *An. st.* 1. *c.* 2. *s.* 35.

Concealing malt to avoid being gaged in the couch.

17. If any malster shall fraudulently convey, or cause or suffer to be conveyed away, from the cistern, uting fat, or other wetting place or utensil, any steeping or part of any steeping of corn making into malt, so that no gage thereof can be taken in the couch by the officer; he shall forfeit 100 l. 1 *G.* 3. *c.* 3. *s.* 18.

Allowance for malt swelling.

18. Out of every 20 bushels charged by the gager, there shall be an allowance made of malt charged in the uting fat, cistern, or other vessel, wherein the same shall be found wetting or steeping, or on the floor within 30 hours after the same shall be thrown out of such vessel,——of four bushels, for the difference between the quantity when it is wet and swoln, and when it is converted into dry malt. 12 *An. st.* 1. *c.* 2. *s.* 20.

And if any corn that hath been steeped be found working or growing upon the floor before it is put upon the kiln, which when dried will not answer so great a quantity from the floor as from the cistern; out of every 20 bushels so charged upon the floor, there shall be allowed to the maker of the malt which shall be gaged upon the floor, after it hath been thrown out of the cistern 30 hours or more, and before it shall be dried, ten bushels, for the difference between the quantity when it is making upon the floor, and when it is dryed. 12 *An. st.* 1. *c.* 2. *s.* 28.

But if any maltster shall not wet or steep his barley or other corn, in the cistern, uting fat, or other vessel, so as the same be covered with water, and continue so covered, for 40 hours before he take the water from it; he shall not be intitled to the said allowance of 4 bushels in every 20 as aforesaid. 33 *G.* 2. *c.* 7. *s.* 64.

And in order that it may be ascertained when such corn is begun to be wetted or steeped, and to prevent frauds in mixing corn with corn steeping; the malster, within a city or market town, shall give 24 hours, elsewhere 48 hours notice in writing to the officer, of the hour or time of the day when he intends to wet corn or grain to be made into malt: And if he shall not begin, and immediately after proceed to cover the whole thereof with water, at the time mentioned in the notice, or within 3 hours after, the notice shall be void; and he shall be obliged to

give a freſh notice before he begin. And he ſhall not begin, but between 4 in the morning, and 9 in the evening. And if he ſhall not give ſuch notice; or having begun to wet ſuch corn, ſhall not immediately proceed to cover the whole with water, and continue the ſame covered for 40 hours; or begin to wet any but between 4 in the morning and 9 in the evening; or after the officer hath taken account of the corn ſteeping, ſhall add any freſh corn or grain; he ſhall forfeit 100 l. 3 *G.* 3. *c.* 13.

Entry of malt made.

19. The maltſter ſhall monthly make entry at the office of exciſe, of all the malt made (either for ſale or not for ſale) in ſuch month; on pain of 10 l. 12 *An. ſt.* 1. *c.* 2. *ſ.* 4.

Payment of the duty.

20. And he ſhall, within four months after entry, pay off the duties, on pain of forfeiting double; and after ſuch default, he ſhall not ſell or carry out any malt until the duty is paid, on pain of double value. 12 *An. ſt.* 1. *c.* 2. *ſ.* 6. 1 *G. ſt.* 2. *c.* 2. *ſ.* 8.

Drawback of the duty for malt damaged.

21. After the duty is paid, if any quantity ſhall be damaged by the ſinking of the veſſel in which the malt ſhall be tranſported from one part of the kingdom to another; the juſtices ſhall at the next ſeſſions, on proof of ſuch damage and of the payment of the duty, ſettle the quantity of the damage, and the allowance to be made in reſpect thereof, and give a certificate of the ſum allowed, which ſhall bear the ſame proportion to the whole duty, as the damage ſhall bear to the value of the malt: on producing of which certificate, the officer ſhall repay or allow to the proprietor the ſum certified. 12 *An ſt.* 1. *c.* 2. *ſ.* 14.

But where ſuch loſs ſhall happen, the perſon who ſhall ſuſtain the ſame, ſhall three days before the next ſeſſions, leave notice thereof in writing with the collector of the diſtrict where the loſs ſhall happen, and of his intention of applying to the ſaid ſeſſions. *ſ.* 15.

Drawback for malt periſhed.

22. After the duty is paid, if any malt ſhall be deſtroyed by fire, by burning of the place where it is kept; or periſh by water, by caſting away of the veſſel in which it is tranſported: the owner may make proof thereof by two witneſſes on oath, and of his having paid the duty, at the next quarter ſeſſions, where ſuch accident ſhall happen; who ſhall grant a certificate of ſuch loſs, on producing of which the duty ſhall be repaid. 12 *An. ſt.* 1. *c.* 2. *ſ.* 27.

Compounding.

23. The commiſſioners, or ſuch perſons as they ſhall appoint, and in default of ſuch appointment the collector and ſupervisor for the diviſion, may compound for the duties of malt made to be conſumed in private families, at 5 s. a head

head by the year; and the houſes of ſuch perſons compounding ſhall not be liable to the duty, or to the ſurvey of the officers. 12 *An. ſt.* 1. *c.* 2. *ſ.* 11.

But if any ſuch perſon ſhall ſell or deliver out any malt, or ſhall permit any other perſon to make malt in his houſe, or ſhall ſell any malt liquor, or ſhall have more perſons in his family than he compounds for, without giving notice of them to the officer of exciſe at or before the next quarter day; he ſhall forfeit 5 l. and loſe the benefit of his compoſition, and for every buſhel of malt ſo fraudulently ſold or made, he ſhall forfeit 20 s. *ſ.* 12.

Exportation.

24. No malt entred and made for exportation only, ſhall be liable to the duties; and no drawback ſhall be allowed for any malt exported. 12 *G. c.* 4. *ſ.* 48. 33 *G.* 2. *c.* 7. *ſ.* 14.

But the maker ſhall be allowed, in conſideration of his extraordinary charge and trouble, 3 d. for every quarter made for exportation. 12 *G. c.* 4. *ſ.* 59.

And by the 1 *G.* 3. *c.* 3. There ſhall be allowed for every 20 quarters of grain made into malt for exportation, thirty quarters of malt, and no more, on exportation, tho' by ſteeping it ſhall run out into any greater quantity. *ſ.* 9.

And the maker, before he ſhall begin to wet or ſteep any ſteeping of corn to be made into malt for exportation, ſhall leave notice in writing with the officer, of the quantity of corn intended to be contained in each ſteeping, on pain of 50 l. and the ſame ſhall be kept ſeparate from all other corn to be made into malt for home conſumption, on pain of 5 s. a buſhel. 12 *G. c.* 4. *ſ.* 49, 58.

And no maker of malt ſhall begin to wet corn to make into malt for exportation, above ſix days before all the corn he may have working on his floors for home conſumption ſhall be dried off; nor ſhall he begin to wet corn for home conſumption, above ſix days before all the corn on his floors for exportation be dried and locked up; on pain of 5 s. a buſhel. *ſ.* 50.

And the maker ſhall keep the whole quantity of his corn making into malt for exportation, of one ſteeping or wetting, when the ſame ſhall be on the kiln, or after it ſhall be taken off the kiln, ſeparate from any former ſteeping or wetting, until it hath been meaſured in preſence of the officer; on pain of 50 l. 3 *G.* 2. *c.* 7. *ſ.* 16.

And the officers, during the ſteeping of the corn ſo intended for exportation, and till it be dried and locked up, may gage and take an account thereof, in all its opera-

tions, as in case the duties were to be charged thereon. 12 *G.* *c.* 4. *s.* 52.

And persons opposing the officers in the execution of this act, shall forfeit 50 l. 12 *G.* *c.* 4. *s.* 58.

And the said maker shall give notice in writing to the officer, or leave notice at the next excise office, of the hour when he intends to take any malt off the kiln, that he may attend the measuring; and after it has been measured, it shall (on pain of 50 l.) be immediately carried on shipboard, or else into storehouses, to be provided by such maker, to be there kept apart from all other malt, under two locks, one to be provided by the proprietor, and the other by the officer at the expence of the proprietor, whereof one key to be kept by the proprietor, and the other by the officer, till the same be delivered out for exportation. 12 *G.* *c.* 4. *s.* 51, 58. 3 *G.* 2. *c.* 7. *s.* 17.

And if he, or any person with his privity, shall open such lock, or make other entrance into the place, or carry any of it away, without consent of the officer, or notice given to him; he shall forfeit 100 l. 3 *G.* 2. *c.* 7. *s.* 18.

And when any maker or proprietor shall be desirous to take away any of the malt for exportation, and shall thereof give notice in writing to the officer 40 hours before the time he shall desire to take out the same, expressing in such notice the quantity of the malt, and the port to which it is to be removed; the officer shall attend at the place where the malt is locked up, and see it measured and delivered out. 12 *G.* *c.* 4. *s.* 53.

And the officer shall keep an account of the malt so delivered out, and of the person to whom it belongs, and shall give such person a certificate to the officer of the division to which it is intended to be removed, who shall file the same, and make an entry thereof; and if the proprietor shall neglect to deliver such certificate, he shall forfeit 50 l. 12 *G.* *c.* 4. *s.* 54.

And persons intending to ship malt for exportation, shall give at least 48 hours notice before they begin to put it on board, to the officer of the port in writing, of the hour when such shipping is intended to be begun, and the name of the ship; on pain of 5 s. a bushel. 12 *G.* *c.* 4. *s.* 57.

And during the shipping, at all such times as the proprietor shall not be actually shipping merchandizes, the hatches of the ship shall be kept locked with two locks at each hatch, one to be provided and the key kept by the proprietor, and the other by the officer; and the hatches

shall

ſhall be ſo kept locked, from the time the ſhips ſhall be loaded till they be ready to ſail. 12 *G. c.* 4. *ſ.* 56.

And perſons breaking open the hatches of any ſhip ſo locked up, ſhall forfeit 50 l. 12 *G. c.* 4. *ſ.* 58.

And the officers may not only attend the meaſuring of ſuch malt, but continue on board the ſhips till they be cleared of their ports. 12 *G. c.* 4. *ſ.* 55.

And if it ſhall be relanded after ſhipping for exportation, beſides the penalty of the bond which ſhall be given for its exportation, the ſame ſhall be forfeited, and treble the value. 1 *G.* 3. *c.* 3. *ſ.* 11.

And the maker who ſhall uſe any ſuch ſtorehouſe for keeping of malt for exportation, ſhall every nine months after the laſt clearing, clear out the ſame on pain of 50 l. 3 *G.* 2. *c.* 7. *ſ.* 20. Or 5 s. a buſhel. 12 *G. c.* 4. *ſ.* 57. And by the 1 *G.* 3. *c.* 3. he ſhall clear out in 15 months; on pain of 50 l. *ſ.* 15, 16.

And if any unmalted oats or barley be found mixed among malt ſhipped for exportation, the perſon ſhipping the ſame ſhall forfeit 5 s. a buſhel. 6 *G. c.* 21. *ſ.* 4.

And if ground malt ſhall be exported, it ſhall be computed at ſo many buſhels as it contained before it was ground. 12 *An. ſt.* 1. *c.* 2. *ſ.* 30.

Power of the juſtices.

25. The penalties relating to this article (except where it is otherwiſe above directed) ſhall be ſued for, levied, and mitigated as by the laws of exciſe, or in the courts at *Weſtminſter*; and be employed half to the uſe of the king, and half to him that ſhall ſue. 12 *An. ſt.* 1. *c.* 2. *ſ.* 9. 24 *G.* 2. *c.* 40. *ſ.* 33.

Appeal.

26. Perſons aggrieved by any judgment of the juſtices, may appeal to the next quarter ſeſſions, giving ſix days notice in writing: but if there be not ſix days between the orders of the juſtices and the ſeſſions, the appeal may be at the ſecond ſeſſions. 12 *An. ſt.* 1. *c.* 2. *ſ.* 37, 38. 1 *G.* 2. *ſt.* 2. *c.* 16. *ſ.* 3.

And the ſeſſions may award coſts to either party, to be levied by warrant of the juſtices or two of them, on the goods of the party. 12 *An. ſt.* 1. *c.* 2. *ſ.* 38.

Certiorari.

27. And no certiorari ſhall be allowed, to ſet aſide any order of the juſtices. 12 *An. ſt.* 1. *c.* 2. *ſ.* 37.

Malt liable to the duties and penalties.

28. And all malt in cuſtody of the maker, ſhall be liable to the duties and penalties, in the ſame manner as if he were the lawful owner. 12 *An. ſt.* 1. *c.* 2. *ſ.* 10.

X. Paper.

Duty on paper imported.

1. By the 10 *An. c.* 19. and 12 *An. ſt.* 2. *c.* 9. (which are in part altered and explained by the 12 *An. ſt.* 2. *c.* 19. and 11 *G. c.* 7.) certain duties are impoſed on paper imported; which ſhall be under the management of the commiſſioners of the cuſtoms.

But old rags, old ropes, or junks, or old fiſhing nets may be imported duty free. 11 *G. c.* 7. *ſ.* 10.

Duty on paper made in Great Britain.

2. And by the ſaid acts of 10 *An. c.* 19. and 12 *An. ſt.* 2. *c.* 9. certain duties are laid on all paper made, and alſo on all paper painted in *Great Britain*, as followeth:

	s.	*d.*
For every ream (at 20 quires of 24 ſheets each to the ream) of demy fine	2	3
Demy ſecond	1	6
Crown fine	1	6
Crown ſecond	1	1½
Fool's cap fine	1	6
Fool's cap ſecond	1	1½
Fine pots	1	6
Second pots	0	9
Brown large cap	0	9
Small ordinary brown	0	6

Whited brown 9d. a bundle, each bundle containing 40 quires.

Paſteboards, mildboards, and ſcale boards, 3s. a hundred weight.

All other paper not particularly charged, after the rate of 18 l. for every 100 l. value.

Painted paper (beſide the duty paid for the paper before painting) 1½d. a yard ſquare.

But paſteboard made of paper that hath paid the duty, ſhall not be charged with further duty.

And books printed at *Oxford* or *Cambridge*, in *Latin*, *Greek*, *Oriental*, or northern languages, ſhall have a drawback of the duty on paper.

The ſaid paper paying *ad valorem* ſhall be computed as it ſhall be worth to be ſold at the next market town, by the oath of the maker or his chief workman, according to his knowledge and belief, to be taken before the collector or ſupervisor.

Officers of the duties on paper.

3. The commiſſioners of the treaſury ſhall appoint commiſſioners of theſe duties; and they ſhall ſubſtitute inferior officers. 10 *An. c.* 19. *ſ.* 41.

4. The

4. The maker or painter ſhall give notice in writing at the next office, of his name and place of abode, and where he intends to make the ſame; on pain that if he makes any before ſuch notice, he ſhall forfeit 30l. 10 *An. c.* 19. *ſ.* 43. Places of making to be entred.

And no perſon ſhall uſe any place for drying the ſame, or making it fit for uſe, other than ſuch common place whereof he hath given notice; on pain of 20l. *ſ.* 44.

And all paper, materials, and utenſils found in any private workhouſe or other place, for which no entry hath been made or notice given, ſhall be forfeited. *ſ.* 54.

5. The officer ſhall by day or night, and if in the night in preſence of a conſtable, be permitted on requeſt to enter into the houſe, mill, yard, drying houſe, warehouſe, or other place, and take an account, and make report thereof to the commiſſioners or whom they ſhall appoint, and leave a copy (if demanded) of ſuch report under his hand with the maker; and if he ſhall not leave ſuch copy (after demand in writing, 12 *G. c.* 28. *ſ.* 30.) he ſhall forfeit 40s. 10 *An. c.* 19. *ſ.* 48. Officer to enter and take account.

And he ſhall be permitted to take an account of the quantity of rags, cordage, and other materials, and of all paper in the poſſeſſion of any painter or ſtainer, and of their proceedings in making, or in painting or ſtaining it. 10 *An. c.* 19. *ſ.* 50.

6. And before any paper ſhall be printed, painted, or ſtained, the officer ſhall be permitted to take account of the dimenſions, and ſhall ſtamp or ſeal every ſheet and piece, to denote that ſuch account hath been taken; and if the officer ſhall miſs any quantity whereof he had ſo taken an account, and ſhall not on reaſonable demand receive ſatisfaction what is become of it, he may charge the duties for it. 1 *G. ſt.* 2. *c.* 36. *ſ.* 17. Mark on paper before painting.

7. Any if and perſon ſhall obſtruct any officer in the execution of his duty, he ſhall forfeit 20l. 10 *An. c.* 19. *ſ.* 50. Obſtructing the officer.

8. No maker ſhall remove any paper of which no account hath been taken, without giving two days notice to the officer; on pain of 20l. 10 *An. c.* 19. *ſ.* 51. Removing before account taken.

And no perſon ſhall remove any ſuch painted paper, until the officer hath taken an account of the quantity thereof, and until every piece or parcel ſhall be marked or ſtamped; on pain of 20l. and the ſaid paper being found in the poſſeſſion of any ſtationer or other dealer, or other perſon for his uſe, ſhall alſo be forfeited. 1 *G. ſt.* 2. *c.* 36. *ſ.* 18.

9. And

Concealing from the officer.

9. And the maker or ſtainer concealing any paper or materials, ſhall forfeit 20l. 10 *An. c.* 19. *ſ.* 53.

Paper unſurveyed to be kept ſeparate.

10. And the maker and ſtainer ſhall keep ſeparate the paper which is unſurveyed, for 48 hours after making or ſtaining, unleſs it ſhall be ſooner ſurveyed by the officer; on pain of 5l. 10 *An. c.* 19. *ſ.* 52.

Entry of paper made.

11. The maker or painter ſhall once in ſix weeks make entry on oath at the next office, of all paper made by him fit for uſe, with the kinds and quantities; on pain of 50l. 10 *An. c.* 19. *ſ.* 45.

But no perſon ſhall be obliged to go to make entry, further than the next market town. *ſ.* 46.

Payment of the duty.

12. And the duty ſhall be cleared off in ſix weeks after entry, on pain of double duty; and after default in payment, no perſon ſhall ſell or deliver any out, till the duty is cleared off, on pain of double value of ſuch paper ſold or delivered out. 10 *An. c.* 19. *ſ.* 47.

Exportation.

13. Paper that hath paid the duty may be exported, and the duties ſhall be drawn back. 10 *An. c.* 19. *ſ.* 57, 58, 59.

But there ſhall be no drawback allowed on foreign paper exported. 10 *G.* 2. *c.* 27.

Power of the juſtices.

14. All the exciſe laws ſhall be in force for managing theſe duties; and the penalties ſhall be ſued for, levied, mitigated and diſpoſed of, as by the laws of exciſe. 10 *An. c.* 19. *ſ.* 60, 61. 24 *G.* 2. *c.* 40. *ſ.* 33.

Paper and utenſils liable to diſtreſs.

15. And all paper, materials, and utenſils, in cuſtody of the maker or ſtainer, or of any to his uſe, or in truſt for him, ſhall be liable to all duties in arrear, and to all forfeitures relating to the ſaid duties, in the ſame manner as if the offender or debtor were the lawful owner. 10 *An. c.* 19. *ſ.* 55.

For the ſtamp duties on paper, ſee title Stamps.

XI. Plate.

Importation.

By the 4 *W. c.* 5. and 6 *G. c.* 11. additional duties are laid on plate imported, over and above what is charged in the book of rates: which ſhall be under the management of the commiſſioners of the cuſtoms.

True making of plate.

Aſſayers. 1. To prevent frauds in the true making of plate it is enacted by the 12 & 13 *W.* *c.* 4. and 1 *An.* *ſt.* 1. *c.* 9. that (beſides the city of *London*) *York*, *Exeter*, *Briſtol*, *Cheſter*, *Norwich*, and *Newcaſtle upon Tyne* ſhall be appointed for the aſſaying and marking of plate.

And the goldſmiths, ſilverſmiths, and plateworkers in the ſaid places, ſhall be incorporated into a company, and chuſe wardens yearly. 12 & 13 *W.* *c.* 4. *ſ.* 2.

And an aſſayer ſhall be elected by the company in each of the ſaid places, who ſhall be ſworn by the mayor. *ſ.* 4, 5.

Maker to be entred with the wardens of the company. 2. And every goldſmith, ſilverſmith, and plateworker, within the ſaid places, and elſewhere, ſhall before he takes upon him to exerciſe the ſaid trade, enter his name, and mark, and place of abode, with the wardens of the company where an aſſayer is; and if he ſhall not make ſuch entry, or ſhall ſtrike any other mark but what is ſo entred, he ſhall forfeit double value, half to the king and half to him that ſhall ſue in any court of record in the county or place where the offence ſhall be committed. 12 & 13 *W.* *c.* 4. *ſ.* 7.

Aſſaying. 3. And every goldſmith, ſilverſmith, and plateworker, inhabiting where there is not an aſſayer, ſhall firſt fix his mark, and then ſend it to an aſſayer; and if it be found by the aſſayer to be of the fineneſs of the ſtandard, then he ſhall mark it, and have 6 d. a pound for his trouble: And if any ſuch perſon ſhall make any plate (leſs in fineneſs than the ſtandard) or put any to ſale (except what by reaſon of its ſmallneſs is not capable of the touch) before it ſhall be aſſayed and marked; he ſhall forfeit the ſame or the value thereof, half to the king, and half to him that ſhall ſue in any court of record in the county or place where the offence ſhall be committed. 12 & 13 *W.* *c.* 4. *ſ.* 9.

Fineneſs by the ſtandard. 4. And as to the fineneſs thereof by the ſtandard, it is enacted by the 6 *G.* *c.* 11. that plate may be made, either according to the old ſtandard (of 11 ounces and 2 penny weights fine ſilver in every pound troy); or according to the new ſtandard (of 11 ounces and 10 penny weights): but differently marked. *ſ.* 41.

Mark. 5. That is to ſay, plate of 11 ounces and 2 penny weights, ſhall be marked with the maker's mark, *viz.* the firſt letters of his chriſtian and ſurname; the mark of the goldſmiths

goldsmiths company in *London*, *viz.* the leopard's head, lion passant and a distinct variable mark to denote the year; (or, with the mark of the worker or maker, and with the mark appointed to be used by the assayers at *York*, *Exeter*, *Bristol*, *Chester*, *Norwich*, or *Newcastle upon Tyne*:)

And plate of 11 ounces and 10 penny weights shall be marked with the maker's mark, *viz.* the first letters of his christian and surname; and the mark of the said company, *viz.* a lion's head erased, the figure of a woman called *Britannia*, and the said mark or letter to denote the year; (or, with the mark of the worker or maker, and the mark of one of the said cities or towns.) 12 *G.* 2. *c.* 26. *s.* 5.

Licence of dealers in plate.

Licence.

1. No person, who shall trade in, vend, or sell any gold or silver plate, or any goods or wares in which any gold or silver shall be manufactured, shall by himself, or by any other imployed by or for him, either publickly or privately, trade in, vend, or sell any piece of plate or goods, or any ware in which the quantity of gold shall be of the weight of two ounces or upwards, or in which the quantity of silver shall be of the weight of 30 ounces or upwards; unless he shall have first paid a duty of 5 l. for a licence to be taken out in manner following. 32 *G.* 2. *c.* 24. *s.* 3.

How to be taken out.

2. That is to say, if it is within the limits of the chief office of excise in *London*, the same shall be granted under the hands and seals of two commissioners of excise; and the duty for the same shall be paid at the chief office of excise in *London*, or at any other place, and to such persons as the said commissioners shall appoint to deliver out such licences, and to receive the said duty: Elsewhere, to be granted under the hands and seals of the several collectors and supervisors of excise, within their respective districts; and the duty for the same shall be paid by the persons taking out such licences, at the office of excise next adjoining to the place where they respectively reside or inhabit, or any other place, and to such persons as the commissioners of excise shall appoint to deliver out such licences and to receive the said duty. 31 *G.* 2. *c.* 32. *s.* 3.

3. And

3. And fresh licences shall be taken out yearly, ten days at least before the expiration of 12 kalendar months after taking out the former licence. *s.* 4. To be renewed yearly.

4. And if any person shall presume or offer to trade in, vend or sell any gold or silver plate, or any goods or wares in which any gold or silver shall be manufactured, or any piece of plate or goods, or any ware in which the quantity of gold shall be of the weight of two ounces or upwards, or in which the quantity of silver shall be of the weight of 30 ounces or upwards as aforesaid, without first taking out such licence, and renewing the same yearly; he shall forfeit 20*l.* *s.* 4. Penalty of dealing unlicensed.

5. Provided that no person shall be liable to take out any licence for trading in, vending, or selling any quantity of gold not exceeding two penny weights, or of silver not exceeding five penny weights, in any one separate and distinct ware or piece of goods. 32 *G.* 2. *c.* 24. *s.* 1. Not to extend to small quantities.

6. All persons using the trade of selling gold or silver plate, or any goods or wares composed of gold or silver, or in which any gold or silver shall be manufactured; and also all persons employed to sell any gold or silver plate, or any such goods or wares aforesaid, at any auction or publick sale; shall respectively be deemed traders in, sellers, or venders of gold or silver plate, and shall take out a licence for the same. 31 *G.* 2. *c.* 32. *s.* 6. Auctioneer and others selling plate to be deemed traders.

7. No pawnbroker shall by himself or by any other for his benefit (either publickly or privately) trade in or sell any gold or silver plate, or any goods or wares in which any gold or silver shall be manufactured; and no person by himself or by any other for his benefit shall use the trade of a refiner of gold or silver, without taking out and renewing yearly such licence as aforesaid. 32 *G.* 2. *c.* 24. *s.* 4. Pawnbrokers and refiners.

And every such pawnbroker and refiner shall be deemed to use the trade of selling or vending gold or silver plate. *id.*

And if any pawnbroker shall trade in or sell any gold or silver plate, or any goods or wares in which any gold or silver shall be manufactured, or shall practise the business of a refiner, without such licence, or shall not have renewed the same yearly, and made such payment as aforesaid; he shall forfeit 20*l.* *id.*

8. No licence shall authorize any person to whom the same may be granted, and who shall sell such gold or silver plate in shops, to trade in or sell such gold Unto what places the licence shall extend.

gold or silver plate in any other shop or place, except in such houses or places thereunto belonging, wherein he shall inhabit and dwell at the time of granting such licence, or in booths or stalls at fairs or markets. 31 *G.* 2. *c.* 32. *s.* 7.

Partners. 9. Persons in partnership and carrying on their trade or business in one house, shop, or tenement only; shall not be obliged to take out more than one licence in one year. 31 *G.* 2. *c.* 32. *s.* 7.

Prosecution for offences. 10. Prosecutions for offences may be in the courts at *Westminster*; or otherwise, if within the limits of the chief office of excise in *London*, the same may be before three commissioners of excise, and in case of appeal before the commissioners of appeal; and elsewhere, before two justices residing near to the place where the offence was committed. 31 *G.* 2. *c.* 32. *s.* 11.

And the said commissioners of excise, and commissioners for appeals (in case of appeal), and justices respectively, shall upon complaint or information on oath summon the party accused; and upon his appearance or contempt, shall proceed to the examination of the fact; and on due proof made thereof by confession, or oath of one witness, shall give judgment; and issue warrants under their hands for levying the penalties by distress (if not redeemed in 14 days); and for want of sufficient distress, shall imprison the offender till satisfaction be made. *id.*

And they may mitigate the said penalties of 20*l.* as by the laws of excise. 32 *G.* 2. *c.* 24. *s.* 8.

Persons aggrieved may appeal to the next sessions. 31 *G.* 2. *c.* 32. *s.* 11.

Disposal of the forfeitures. 11. All forfeitures (the necessary charges for the recovery thereof being first deducted) shall be distributed, half to the king, and half to him who shall inform or sue. 31 *G.* 2. *c.* 32. *s.* 12.

Duty to be paid by the user.

Duty to be paid by the user. 1. By the 29 *G.* 2. *c.* 14. there shall be paid, by all persons and bodies politick or corporate, for all silver plate which they shall own, use, have, or keep, these several annual duties, *viz.* For 100 ounces troy weight, and not amounting to 200, 5*s.*; for 200, 10*s.*; and so 5*s.* more for every 100 ounces to the number of 4000, and for 4000 ounces and upwards shall be paid the sum of 10*l.* The same to be under the management of the commissioners of excise. *s.* 1, 2.

But

But plate belonging to places of religious worship and only used there shall not be charged. *s.* 9.

Nor stock in trade of any goldsmith, silversmith, manufacturer, seller of or dealer in plate; but they shall pay for plate used in their families. *s.* 9, 10.

Also persons having plate pledged to, or deposited with them, shall not be charged, unless they also use the same: but the true owner shall be charged. *s.* 7, 8.

2. And all persons and bodies corporate, who on *July* 5, 1756, shall own, use, have, or keep any plate chargeable to these duties, within the limits of the chief office of excise in *London*, shall make entry thereof in writing at the said office within 30 days; and elsewhere, at the next excise office in 40 days: And all persons who shall after *July* 5, 1756, begin to own, use, have, or keep any such plate, shall make the like entry in 20 days: And at the time of such entry, shall pay the duties; for which the excise officers shall give a receipt. *s.* 3, 12. Entry and payment.

And the duties shall continue payable from *July* 5, annually; or from the time of beginning to keep such plate respectively. *s.* 3.

And within 30 days after the commencement of each year, fresh entry shall be made, and the duties paid. *s.* 4.

But persons having made entry and payment, and afterwards acquiring other plate within the year, shall not enter nor pay for the same, till after the expiration of such year. *s.* 5.

Persons neglecting to make entry as aforesaid, or concealing plate to avoid the duties, shall forfeit 20 *l.* *s.* 4.

But if they shall enter and pay before prosecution, altho' not strictly within the time, they shall be indemnified. *s.* 6.

And if any person having made entry and payment shall die within the year; he to whom the property shall come shall not be liable to pay for the residue of the year. *s.* 11.

3. Prosecutions for the *duties* and for *forfeitures and offences* against this act shall be in the courts, at *Westminster*: or otherwise, the prosecutions for *forfeitures and offences*, if it is within the limits of the chief office of excise in *London*, shall be determined by three commissioners, and in case of appeal, by the commissioners of appeal; and elsewhere, by two justices residing near to the place where any forfeiture shall be incurred or offence committed; and the informer or defendant aggrieved may Power of the justices therein.

appeal to the next seſſions, whoſe judgment ſhall be final. ſ. 13.

And on complaint or information on oath exhibited and brought before ſuch commiſſioners or juſtices, they ſhall ſummon the party accuſed; and if it is a body politick ſhall ſummon the chief officer or officers thereof; and on appearance or contempt, ſhall proceed to the examination of the matter of fact; and on proof by confeſſion, or oath of one witneſs, ſhall give judgment, and iſſue warrants for levying the forfeitures and penalties on the goods of ſuch perſon or body politick, and cauſe ſale to be made thereof if not redeemed in 14 days; and for want of ſufficient diſtreſs, otherwiſe than in the caſe of a body politick, ſhall impriſon the offender till ſatisfaction be made. ſ. 13.

Which ſaid forfeitures and penalties (neceſſary charges for the recovery thereof being firſt deducted) ſhall be half to the king, and half to him who ſhall inform or ſue. ſ. 14.

Exportation.

So much wrought plate ſhall be exported yearly, as ſhall be allowed by the commiſſioners of the cuſtoms or three of them. 9 & 10 *W.* *c.* 28. ſ. 1.

But no drawback ſhall be allowed on the exportation of ſilver plate. 31 *G.* 2. *c.* 32. ſ. 9.

For other regulations concerning plate, not relating to any of theſe duties, the reader may conſult the ſtatutes at large mentioned under this head: and eſpecially the 12 *G.* 2. *c.* 26.

XII. Salt.

Officers of the ſalt duties.

1. The duties upon ſalt ſhall be under the management of the commiſſioners of exciſe. 5 *W.* *c.* 7. ſ. 5.

Or particular commiſſioners may be appointed; in which caſe they ſhall have the ſame power as commiſſioners of the exciſe. 1 *An.* ſt. 1. *c.* 21. ſ. 26.

And all collectors and other officers for aſcertaining, collecting, or receiving the duty, ſhall be appointed under the hands and ſeals of the ſaid commiſſioners. 5 *W.* *c.* 7. ſ. 5.

And

And no person shall act as chief commissioners until he shall before a baron of the exchequer take the oaths of allegiance and supremacy, and the oath following:

You shall swear to execute your office, truly and faithfully without favour or affection, and shall from time to time true account make and deliver to such person and persons as his majesty shall appoint to receive the same; and shall take no fee or reward for the execution of the said office, from any other person than from his majesty, or those whom his majesty shall appoint on that behalf: So help you God. 5 W. c. 7. s. 14.

And no person shall be capable of any office relating to the said duties (other than that of chief commissioner), until he shall before two commissioners, or two justices of the peace where he shall be appointed officer, take the said oaths of allegiance of supremacy, and the said last mentioned oath *mutatis mutandis*. 5 W. c. 7. s. 15.

British salt imported.

2. By the 2 & 3 *An. c.* 14. No salt of the produce of *Great Britain* shall be imported or landed in *England*; on pain that the same shall be forfeited, and also the ship and tackle; and every person assisting therein shall forfeit 20 l. or be imprisoned six months. *s.* 1. (And by the 5 *G. c.* 18. *s.* 23. this is extended to salt shipped for exportation, and put on shore again, or taken out of the vessel.)

And the salt officers may at any time within two months, seize the salt, ship and tackle; and if the owner shall not in 20 days claim the same, and give security to answer the value, they shall be sold. *s.* 2.

But this shall not extend to salt shipped to be carried coastwise by certificate. *s.* 3.

Also, where salt entred for exportation, shall be forced into any port by weather, enemies, or other necessity, the owner or master may within 20 days reland the salt, so as entry be made, and the drawback repaid. *s.* 4.

Also, where a ship shall come in from *Ireland*, or any other foreign part, having any salt on board, which was taken in only for provision of the ship; the master may land the same, so as entry be made in ten days, and the duty paid or secured as for foreign salt imported. *id.* 6. But if he shall not enter and pay, or secure the duty in ten days, and before it be landed, the same shall be forfeited; and the master, owner, or importer, shall forfeit double value. 5 *G. c.* 18. *s.* 18.

Foreign salt imported.

3. By the 5 *W. c.* 7. There shall be paid for every gallon of foreign salt imported, 3 d. over and above other duties. *s.* 3.

And by the 9 & 10 *W.* *c.* 44. an additional duty is laid, of 7 d. a gallon. *ſ.* 3. The ſame amounting in the whole to 6 s. 8 d. a buſhel. 8 *G.* *c.* 4.

The gallon to be rated after eight gallons to the buſhel *Wincheſter* meaſure. 5 *W.* *c.* 7. *ſ.* 18.

And 84 lb. weight of foreign ſalt ſhall be deemed a buſhel. 1 *An.* *ſt.* 1. *c.* 21. *ſ.* 6.

Which ſaid duties ſhall be paid by the importer, on entry, and before landing; yet, on giving ſecurity to the collector, he ſhall have ſix months time for payment: But if he pay ready money, he ſhall have after the rate of 10 l. *per centum per annum* abated. 9 & 10 *W.* *c.* 44. *ſ.* 6.

And by the 5 *An.* *c.* 29. If the ſalt imported amounts in the whole to more than 40 buſhels, a farther time is allowed for payment of the duties: In order to which, the ſalt ſhall on landing be weighed, cellared, and locked up in the preſence of a ſalt officer, under the cuſtody of the merchant or importer (who is to be at the charge of the cellarage or ſtorehouſe); and the merchant or importer may in preſence of a ſalt officer, and by warrant or permit under his hand and ſeal, have what quantity thereof his occaſions may require, not under 40 buſhels at a time; giving ſecurity for the duty of what quantity he receives, payable in ſix months; and if he ſhall pay ready money, he ſhall have after the rate of 10 l. *per centum per annum* abated. *ſ.* 1, 3.

But if ſuch foreign ſalt imported, ſhall not on landing be ſecured as aforeſaid, it ſhall be liable to payment of duties, and to ſuch penalties for not paying or ſecuring the ſame, as if this act had not been made; and no ſalt ſo cellared and locked up ſhall be removed without notice firſt given to the officer, and without a warrant or permit for conveying it; on pain of forfeiting ſuch ſalt, and 10 s. a buſhel, and alſo 20 l. to be recovered of the importer; and the carrier or perſon removing it, ſhall be alſo liable to the penalty of 10 s. a buſhel, and 10 l. for every offence. *ſ.* 2.

And no foreign ſalt ſhall be imported in any ſhip or veſſel of leſs burthen than 40 tuns, and in bulk only (except for the neceſſary proviſions of the ſhips); on pain of forfeiting the ſalt and double value thereof, to be recovered of the importer. 3 *G.* 2. *c.* 20. *ſ.* 18.

Landing ſalt before payment of the duty.

4. And if any ſalt be landed before entry made with the ſalt officer, or before the duty paid, or without a warrant for landing the ſame ſigned by the ſalt officer; it ſhall be forfeited,

forfeited, or the value, and alſo 10 s. a buſhel. 9 & 10 *W.* *c.* 44. *ſ.* 6. And moreover every perſon aſſiſting therein, ſhall forfeit 100 l. 5 *G.* *c.* 18. *ſ.* 24.

Search on ſhip-board.

5. And any officer of the ſalt duties, or cuſtoms may go on board any veſſel, to ſearch if there be any ſalt on board, and may ſeize the ſame if it be found in any other veſſel than that wherein it was brought into port, unleſs it had been entred, or the duty paid; and all ſuch ſalt ſhall be forfeited, or the value thereof, to be recovered of the maſter or owner of the veſſel, who ſhall alſo be liable to all other penalties as if the ſame had been landed without entry or payment of duties: and every perſon obſtructing ſuch officer, ſhall forfeit 40 l. 5 *G.* *c.* 18. *ſ.* 22.

Ships hovering near the coaſt.

6. And where any veſſel, laden with ſalt, ſhall be found hovering on the coaſts, the officers of the cuſtoms or ſalt duties may go on board and compel them to come into port, and may continue on board, till the ſalt ſhall be unladen, or the ſhip depart on her voyage: And if the perſons on board ſuch ſhip, or any other veſſel importing ſalt, ſhall neglect or refuſe to enter, or to unlade ſuch ſalt, for 20 days after it is come into port, or within that time to depart on their voyage, unleſs permitted by the chief officer of the cuſtoms to ſtay longer; in ſuch caſe all the ſalt on board ſhall be forfeited, and double value thereof, to be recovered of the maſter or commander of the veſſel. 1 *An.* *ſt.* 1. *c.* 21. *ſ.* 7.

Duty on home ſalt.

7. By the 5 *W.* *c.* 7. a duty is laid on home ſalt of 1½d. a gallon. *ſ.* 3.

Which by the 7 & 8 *W.* *c.* 31. is explained to extend to all ſalt made from rock ſalt, ſalt refined, or ſalt made from ſalt. *ſ.* 43.

And by the 9 & 10 *W.* *c.* 44. a further duty is impoſed on all ſuch ſalt, of 3½d. a gallon. *ſ.* 5. The ſame amounting in the whole to 3 s. 4 d. a buſhel.

Note; By the 3 *G.* 2. *c.* 20. Theſe duties were repealed, but were revived by the 5 *G.* 2. *c.* 6. for three years, and ſo from time to time continued, and at laſt by the 26 *G.* 2. *c.* 3. made prepetual.

And by the 9 *An.* *c.* 23. a further duty of 9 s. a ton, is laid on all rock ſalt exported to *Ireland*. *ſ.* 44.

And rock ſalt ſhall be aſcertained as to payment of the duties, at 65 pounds weight to the buſhel. 1 *An.* *ſt.* 1. *c.* 21. *ſ.* 9.

All other ſalt at 56 pounds to the buſhel. 9 & 10 *W.* *c.* 44. *ſ.* 34.

But by the 8 *G.* 3. *c.* 25. foul ſalt, called by the ſeveral names of grey or ſcrow ſalt, ſalt ſcale, ſand ſcale, or cruſtings, being produced in the manufacturing of white ſalt, and not fit to be applied to the curing of proviſions, but which may be beneficial in agriculture, ſhall be charged only with a duty of 4 d. a buſhel. And if any perſon, after it has been removed from the works, ſhall uſe the ſame otherwiſe than for the manuring of land he ſhall forfeit 60 l. one third to the king, and two thirds to the informer, to be levied in like manner, and with like power of mitigation, as by the laws of exciſe, or in the courts at *Weſtminſter*.

Drawback on rock ſalt refined.

8. Where any rock ſalt for which the duties ſhall have been paid or ſecured, ſhall be melted and refined; the perſon who ſhall refine it into white ſalt, ſhall have an abatement out of the duty of the ſaid white ſalt, of ſo much as was charged on the ſaid rock ſo melted and refined; ſo as the rock ſo refined were before the melting thereof weighed in the preſence of the officer; and ſo as oath be firſt made before a juſtice near adjoining, of the particular quantity of rock ſalt by ſuch refiner imployed in making the ſaid white ſalt, and that he or any other perſon by his privity did not increaſe the ſaid rock ſalt by mixing or other undue practice, and that no former allowance for the ſaid rock ſalt had been made to his uſe; and ſo as due proof be made upon oath or otherwiſe, that the duties for the ſaid rock ſalt ſo refined were paid or ſecured. 10 & 11 *W.* *c.* 22. *ſ.* 6.

And no rock ſalt ſhall be refined or made into white ſalt in any place except within ten miles of the pit, or at ſuch places as were uſed for refining rock ſalt before *May* 10, 1702. on pain of 40 s. a buſhel. 1 *An.* *ſt.* 1. *c.* 21. *ſ.* 10.

Entry of ſalt works and pits.

9. Every maker of ſalt, refiner of rock ſalt, and proprietor of any ſalt works or pits, who ſhall ſet up or uſe any ſalt work, ſalt pit, ſalt pan, ſtorehouſe, warehouſe, or other place, for the making, laying, refining, or keeping of ſalt, or rock ſalt, without giving notice thereof at the next ſalt office; ſhall forfeit 40 l. 1 *An.* *ſt.* 1. *c.* 21. *ſ.* 1.

Officer to enter and ſurvey.

10. And if any ſalt maker, importer of ſalt, or refiner or proprietor of rock ſalt, ſhall on requeſt or demand made, in the day time, or in the night in preſence of a conſtable, refuſe to permit the officer to enter and come into his works, warehouſe, ſtorehouſe, or other place for making,

making, laying, refining, or keeping of salt; he shall forfeit 40 l. 1 *An. st.* 1. *c.* 21. *s.* 2.

11. And, generally, if any person shall obstruct any officer in the execution of his office, or of the powers given him by any law relating to the salt duties; he shall forfeit 20 l. and for nonpayment, and in default of distress, he may be committed to the house of correction, to be whipt and kept to hard labour for any time not exceeding one month. 1 *An. st.* 1. *c.* 21. *s.* 4. Obstructing the officer.

12. No salt shall be delivered from any salt works or pits, without notice first given to the officer; on pain of forfeiture of the salt so delivered, and of 20 l. by the owner of the works or pits. 5 *W.* *c.* 7. *s.* 19. Removing salt without notice and entry.

And by the 9 & 10 *W.* *c.* 44. No salt shall be delivered from any salt works or pits, without notice given to the officer; on pain of the owner forfeiting the same, and 10 s. a bushel. *s.* 26.

And if any *officer* shall deliver, or be consenting or privy to the delivering, removing, or conveying, British white salt, refined salt, rock salt, or salt rock, from any salt work, crib, storehouse, warehouse, or other place made use of for making, refining, or keeping of any such salt; or from any salt pit; or to the landing any foreign salt out of any vessel importing the same from beyond the seas; before the same be duly entred and charged in the book kept for that purpose; he shall forfeit, over and above the penalty of his bond entred into for the due performance of the trust reposed in him, double the value of such salt, and also 10 s. a bushel. 5 *G.* 3. *c.* 43. *s.* 40.

13. The collector shall provide at every salt work or pit, a sufficient beam, scales, and weights, or stilyard, and shall have liberty to fix the same, for weighing the salt that shall be delivered from thence; and one or more persons living near, shall be admitted and sworn to the true weighing of such salt, before one justice near adjoining, without fee; and he shall be paid by the collector or officer for the duties. 7 & 8 *W.* *c.* 31. *s.* 46. Scales and weights.

14. Every owner of any rock pit, who shall take any rock salt out of such pit, shall before the removal thereof, cause the same to be weighed in the presence of the salt officer, who shall attend at all reasonable hours in the day time to see it weighed, and take an account and make return thereof in writing under his hand to the commissioners of excise, or whom they shall appoint, leaving a true copy under his hand with the proprietor: and if the proprietor refuse to weigh it in presence of the officer when Weighing.

taken out of the pit, or suffer any rock salt to be removed from the pit before it hath been weighed; he shall forfeit 20l. and double value. 10 & 11 *W.* *c.* 22. *s.* 3.

Entry of salt made.

15. All makers and proprietors of salt shall make entries with the salt officers of the quantity by them made and delivered, or imported; and shall have a warrant under the hand and seal of an officer, impowering them to carry away the same, before it shall be removed, which warrant the officer shall give on paying or securing the duties (in nine months, 5 *An.* *c.* 29. *s.* 5.) But if any person at the time of entry shall pay ready money, he shall have after the rate of ten *per centum per annum* allowed. 5 *W.* *c.* 7. *s.* 6.

Payment of the duties.

16. And the proprietor of rock pits shall clear off the duties of all rock salt, in two days after the charge made by the officer, or within the said two days give security to pay the same (in twelve months, 5 *An.* *c.* 29. *s.* 5.); on pain of double value of the duties: But if he shall pay within the two days, he shall be allowed after the rate of 10l. *per centum per annum*, for the said twelve months. 10 & 11 *W.* *c.* 22. *s.* 4, 5.

Discount on payment.

17. And persons giving security for payment of the duties, may at any time within 28 days after giving the same, pay the duty, and shall have a discount after 10l. *per centum per annum* for the remainder of the time. 1 *An.* *st.* 1. *c.* 21. *s.* 29.

How far rock salt may be removed, with the duty unpaid.

18. But the owners of rock salt, may remove it out of the pits, or warehouses adjoining or belonging to such pits, into their other warehouses or places for storing thereof, for convenience of selling or shipping after entry made, and a warrant taken for the same from the next officer; and shall not be obliged to pay or secure the duty on such removal. 5 *W.* *c.* 7. *s.* 22.

Salt carried without a permit.

19. The officers may seize all salt carried before entry, without a permit, and the same shall be brought to the next office; and if it shall not be claimed by the owner or one deputed under his hand, in ten days, it shall be forfeited and sold the next general day of sale: And if it be claimed in ten days, and the claimer doth not make it appear by the oath of one witness that it had been duly entred, and a warrant obtained for removing it, it shall likewise be forfeited: And every person who shall carry or cause it to be carried before such entry and warrant, shall forfeit double the value. 5 *W.* *c.* 7. *s.* 7. And also 10s. a bushel. 9 & 10 *W.* *c.* 44. *s.* 2.

And

And by the 1 *An. ſt.* 1. *c.* 21. If any ſalt carrier, or other perſon, ſhall remove any ſalt from any ſalt works, or place thereunto belonging, without entry and payment of the duties or ſecuring the ſame, or without a permit; the officers may not only ſeize the ſalt, but alſo apprehend the offender, and if he ſhall not on conviction pay the penalties, and no ſufficient diſtreſs can be found, he may be committed to the houſe of correction to be whipt and kept to hard labour for any time not exceeding one month. *ſ.* 4.

And by the 2 & 3 *An. c.* 14. The carrier who ſhall carry any ſalt without a permit, ſhall forfeſt 20 l. *ſ.* 8. Salt found unentred.

20. And every perſon in whoſe poſſeſſion any ſalt ſhall be found, near the ſalt works or ſea coaſts which hath not been entred, and the duty paid or ſecured; ſhall if it be foreign ſalt, be liable to ſuch penalties, as if he had landed the ſame without entry or payment of duties; and if it be *Engliſh* ſalt, he ſhall be liable to ſuch penalties, as if he had removed it from the ſalt works without entry or payment of duties, and without a permit; unleſs he ſhall make it appear, that he bought it of a maker, retailer, or importer of ſalt, and of whom. 1 *An. ſt.* 1. *c.* 21. *ſ.* 3.

21. The ſalt officer ſhall deliver *gratis* and without delay, ſo many ſeveral permits to each carrier of ſalt, as he ſhall demand for ſuch ſeveral horſe loads of ſalt as he ſhall load at one time, and at one ſalt work. 7 & 8 *W. c.* 31. *ſ.* 47. Several permits to be delivered with ſeveral parcels.

22. The officer, where he ſhall meet with any perſon carrying ſalt, by day or night, by land or water, may demand a ſight of the permit; and if he ſhall ſuſpect that there is more ſalt than is expreſſed in the permit, he may at his own expence re-weigh the ſame; and if the ſalt on re-weighing ſhall be found to be more in weight than is contained in the permit, the ſurpluſage ſhall be forfeited; and the perſon or perſons concerned in carrying the ſame, ſhall be liable to the penalties and forfeitures as perſons carrying ſalt without payment of the duties. 5 *G.* 3. *c.* 43. *ſ.* 42. Officer may demand ſight of the permit.

23. The lord mayor and aldermen in *London*, and the juſtices of the peace in the county at their general ſeſſions, may ſet and publiſh in writing the prices of ſalt, and alter the ſame as there ſhall be occaſion: and perſons refuſing to ſell at ſuch price, or ſelling at a higher price, ſhall forfeit 5 l. half to the king, and half to the informer, by diſtreſs, by warrant of the lord mayor or any ſuch juſtice; Prices of ſalt.

and in default of ſufficient diſtreſs, to be impriſoned till paid. 7 & 8 *W.* *c.* 31. *ſ.* 92.

Salt to be ſold by weight.

24. By the 9 & 10 *W.* *c.* 6. No perſon dealing in ſalt, ſhall *ſell* it otherwiſe than by weight, after the rate of 56 pounds to the buſhel; on pain of 5 l. to the informer; to be determined by two juſtices reſiding near. And the party grieved may appeal to the next ſeſſions. And the ſaid juſtices ſhall on complaint ſummon the party accuſed, and on appearance or contempt examine the matter, and on proof by the oath of two witneſſes, or confeſſion, give judgment, and ſhall iſſue their warrant to levy the ſame by diſtreſs, and cauſe ſale thereof to be made, if not redeemed in ſix days, rendering the overplus, and for want of ſufficient diſtreſs, ſhall impriſon the offender till ſatisfaction is made.

And no perſon ſhall *buy* ſalt otherwiſe than by weight, and not by meaſure; on pain of 10 s. a buſhel, and ſo proportionably. 1 *An.* *ſt.* 1. *ſ.* 21. *ſ.* 28.

Carrying coaſtwiſe.

25. No retailer or ſhopkeeper ſhall ſhip any ſalt to be ſent to any port within the kingdom, before he hath made it appear by oath or otherwiſe, before the commiſſioners or a ſalt officer, that the duty is paid or ſecured, or that it was bought of ſome other retailer or ſhopkeeper that hath paid the duty. 5 *W.* *c.* 7. *ſ.* 8.

And all ſalt to be put on ſhipboard, ſhall be weighed at the place where taken on board; and none ſhall be carried on board before it is weighed, and a permit containing the quantity is obtained; on pain of forfeiture, and 10 s. a buſhel: But if the officer ſhall not attend to weigh it, or refuſe to give a permit, it may be carried on board without incurring any penalty. 10 & 11 *W.* *c.* 22. *ſ.* 10, 11.

And where any ſalt ſhall be laid on ſhipboard, the officer of the cuſtoms where it ſhall be laden, ſhall in the cocquet (which cocquet ſhall be alſo ſigned by the ſalt officer) expreſs the quantity: And if ſuch ſhip ſhall come into any port, the officers of the cuſtoms or of the ſalt duties, may go on board and demand a ſight of the cocquet, and if any ſuch officer ſhall have juſt cauſe to ſuſpect, that there is not ſo much ſalt on board as the quantity expreſſed in the cocquet, and ſhall make affidavit thereof, before the collector or cuſtomer of the port, or perſon executing either of their offices; he may weigh all the ſalt on board; and if there ſhall not be ſo much as the cocquet expreſſeth (making allowance for waſte) the ſalt remaining ſhall be forfeited. 1 *An.* *ſt.* 1, *c.* 21. *ſ.* 13.

And

And perſons ſhipping ſalt to be carried coaſtwiſe, the duties for which have been paid or ſecured, ſhall have an allowance for waſte after the rate of three buſhels for every 40 buſhels of white ſalt, and after the rate of a buſhel and an half for every 40 buſhels of rock ſalt; which allowance ſhall be made but once for the ſame ſalt, altho' it be carried from ſeveral ports coaſtwiſe. 5 *An.* *c.* 29. *ſ.* 4. 6 *An.* *c.* 12. *ſ.* 1.

And every commander of any veſſel that ſhall carry ſalt from one port to another within the kingdom, ſhall (before he hath a warrant for landing it) deliver to the ſalt officers in the port of landing, a true particular of the quantity, ſigned by the ſalt and cuſtomhouſe officers of the port from whence he came; and then the maſter, mate, or boatſwain, ſhall make oath before ſome of the commiſſioners or their officers, that to his knowledge there hath not been laid on board any ſalt ſince he came from ſuch port. And if the veſſel be to deliver one part of the ſalt at one port, and another part at another port, then the officers for the ſalt and cuſtoms, where part of the ſalt ſhall be delivered, ſhall certify on the back of the warrant, or by certificate alone, under their hands and ſeals, how much of the ſalt hath been there landed, on pain of forfeiting double the value of the ſalt that ſhall be otherwiſe delivered. 5 *W.* *c.* 7. *ſ.* 9. And likewiſe 10 s. a buſhel. 9 & 10 *W.* *c.* 44. *ſ.* 12.

And the officer at the unlading port may go on board the ſhip, and demand a ſight of the permit, and weigh the ſalt upon unlading; and if it be more in weight than is contained in the permit, the ſurpluſage ſhall be forfeited. And if the maſter of the ſhip ſhall refuſe to ſhew the permit, the officer may ſeize and detain the ſalt till it be produced. And if he do not produce it in four days after ſeizure, the ſalt ſhall be forfeited. 10 & 11 *W.* *c.* 22. *ſ.* 12, 13.

On reſhipping any ſalt from any boat, barge or other veſſel, and before any diſpatches be granted for the ſalt ſo reſhipped, the maſter, mate, or chief boatman, ſhall make oath before the ſalt officer, that all the ſalt taken in at the place of lading is reſhipped on board ſuch veſſel, and that no ſalt hath been added to it or taken from it, to the beſt of his knowledge and belief; on pain of forfeiting double the value of the ſalt that ſhall be otherwiſe reſhipped, and likewiſe 10 s. a buſhel. 5 *G.* *c.* 18. *ſ.* 25.

And where any ſubject hath ſhipped ſalt that hath paid duty, in order to be conveyed to ſome part of *England*, and any of it is loſt at ſea (or in any port, harbour, or river,

8 *Geo.*

8 *G.* *c.* 4. *ſ.* 11.) by ſtorm, or being thrown overboard for preſerving mens lives or the veſſel (or by ſinking of the ſhip, or be taken by enemies, 9 & 10 *W.* *c.* 44. 2 & 3 *An.* *c.* 14.); in ſuch caſe, the merchant or owner of the ſalt ſhall, on proof made by the oaths of two witneſſes, whereof the maſter or mate ſhall be one, at the quarter ſeſſions where he ſhall inhabit, of the loſs of ſuch ſalt, and that the ſame was not occaſioned by any leakage of the ſhip, or any negligence or default of the maſter or mariners, receive from the ſaid ſeſſions a certificate that ſuch proof was made before them; and on producing the certificate to the ſalt officer he ſhall let him buy the like quantity duty free. 2 & 3 *An.* *c.* 14. *ſ.* 18. Which certificate ſhall alſo vacate the ſecurity given for payment of the duties. 26 *G.* 2. *c.* 32. *ſ.* 6.

Exportation.

26. When any ſalt ſhall be entred to be put on board, and the duty paid or ſecured; the officer ſhall, on due notice, by himſelf, or deputy, between ſun riſing and ſetting, attend the weighing it out, without loſs of time; on pain of 40 s. 9 & 10 *W.* *c.* 6. *ſ.* 3.

And the ſalt officers may go aboard all ſhips exporting ſalt, and continue, and take an account thereof; and if any perſon ſhall obſtruct any ſuch officer, he ſhall forfeit 20 l. 1 *An.* *ſt.* 1. *c.* 21. *ſ.* 15.

And there ſhall be a drawback of the duties on ſalt exported. 5 *W.* *c.* 7. *ſ.* 11. 10 & 11 *W.* *c.* 22. *ſ.* 7. 5 *An.* *c.* 29. *ſ.* 16.

Moreover there ſhall be an allowance of four buſhels for every 40 buſhels of white ſalt, and of two for every 40 buſhels of rock ſalt, exported to *Ireland*; for the waſte in carriage. 5 *An.* *c.* 29. *ſ.* 14.

And if any ſalt, for which the duty hath been repaid on exportation, ſhall be landed again before the duty be again paid and entry made, and other things performed, as in caſe of foreign ſalt imported; the offender ſhall forfeit double value, and 10 s. a buſhel, and the other penalties for foreign ſalt landed unentred. 9 & 10 *W.* *c.* 44. *ſ.* 27. 5 *W.* *c.* 7. *ſ.* 20.

And if any ſhip laden with ſalt exported, ſhall by ſtreſs of weather or otherwiſe be drove into any port, the ſalt officer may come on board, and continue till the ſhip ſhall unlade her cargo, or return to ſea; an pain of 20 l. to be recovered of the maſter who ſhall refuſe the officer to come or continue on board. And if any part of the ſalt ſhall be put on ſhore, without entry or repayment of the duty; the

ſaid

ſaid ſalt, and alſo the whole cargo of ſalt in the ſhip, ſhall be forfeited. 1 *An. ſt.* 1. *c.* 21. *ſ.* 12.

And where any ſalt, for which the duties ſhall have been paid or ſecured, ſhall be ſhipped in order to be exported, and the ſame ſhall periſh by ſinking of the ſhip in the port, before the exporter ſhall be intitled to a drawback; the exporter or proprietor ſhall on proof made at the next ſeſſions, to be held next to the place where it ſhall ſo periſh, of the loſs of ſuch ſalt, receive from the ſaid ſeſſions a certificate, that ſuch proof was made before them; and on producing the certificate to the collector of the ſalt duties, he ſhall let ſuch perſon buy the like quantity duty free. 2 & 3 *An. c.* 14. *ſ.* 10.

And where any ſalt ſhall be ſhipped in order for exportation to *Ireland*, and it ſhall periſh by ſinking of the ſhip, or be taken by enemies; the exporter or proprietor ſhall, on proof made at the quarter ſeſſions for the place from whence it was exported, of the loſs of ſuch ſalt, receive from the ſaid ſeſſions a certificate, that ſuch proof was made before them; and on producing the certificate to the officer of the place where the duty hath been paid or ſecured, the ſecurity ſhall be diſcharged, and the money repaid. 4 *An. c.* 12. *ſ.* 11. 9 *An. c* 23. *ſ.* 46. Proof to be made in two years. 26 *G.* 2. *c.* 32. *ſ.* 7.

27. The curers of fiſh for exportation may import foreign ſalt or take from the pit or work *Britiſh* ſalt (or rock ſalt refined, 8 *G. c.* 16. *ſ.* 6.) for curing fiſh for exportation, without duty, except the cuſtoms on importation; ſuch foreign ſalt being landed, and ſuch *Britiſh* ſalt being taken from the pits or works, and weighed, in the preſence of an officer, and being lodged in a warehouſe, under a lock both of the officer and proprietor; which ſhall remain there during the ſeveral intervals of the fiſhing ſeaſon. 5 *G. c.* 18. *ſ.* 1. Salt for curing of fiſh.

And any perſon who ſhall imbezil any foreign ſalt after importation, and before cellaring, ſhall forfeit 20 *s.* a buſhel; and any perſon who ſhall imbezil any *Britiſh* ſalt, after weighing at the pits or works, and before cellaring, ſhall forfeit 10 *s.* buſhel. 5 *G. c.* 18. *ſ.* 4.

The proprietor ſhall enter at the next office the quantity ſo by him lodged; and the officer ſnall keep an account of the quantity in his cuſtody. 5 *G. c.* 18. *ſ.* 1.

And at the beginning of the fiſhing ſeaſon, the proprietor or his agent ſhall make oath in writing before an officer at the next office, declaring the quantity ſo lodged, and that it is all intended for curing of fiſh for exportaion only,

only, and ſhall not by his conſent be delivered but for the ſaid purpoſe: after which oath ſo made and filed, the officer in whoſe cuſtody the ſalt hath continued during the interval of the fiſhing ſeaſon, ſhall deliver all the ſaid ſalt into the ſole cuſtody of the proprietor. 5 *G. c.* 18. *ſ.* 1.

And in the caſe of herrings to be cured for exportation it is enacted by the 8 *G. c.* 4. and 8 *G. c.* 16. that the proprietor of ſuch ſalt delivered duty free, or his agent, ſhall inſtead of the ſaid oath, make oath in writing at the next ſalt office, declaring the quantity of the foreign or *Britiſh* ſalt reſpectively lodged for curing of fiſh, and that it is intended for the curing of fiſh for exportation only, and ſhall not by his conſent be delivered but for that purpoſe, except ſo much thereof as ſhall be uſed for curing ſuch red or white herrings as ſhall be entred for home conſumption, and charged with the duties by the ſaid acts reſpectively chargeable thereupon.

And no foreign ſalt ſhall be delivered over from the joint cuſtody of the officer and proprietor, into the ſole cuſtody of the proprietor or his agent, for curing fiſh for exportation; except he give ſecurity to the ſatisfaction of the chief officer of the ſalt duty in the port, that he will account for the foreign ſalt ſo by him received, or anſwer the penalties. 8 *G.* 2. *c.* 12. *ſ.* 3.

And for every buſhel of ſalt ſo lodged, which ſhall be either carried away, or found wanting at the redelivering thereof into the ſole cuſtody of the proprietor, reaſonable allowance for waſte being firſt made; the proprietor ſhall forfeit 20 s. 5 *G. c.* 18. *ſ.* 3.

And at the end of every fiſhing ſeaſon, the officer ſhall take an account of the quantity remaining in hand, which ſhall be locked up as aforeſaid; and the proprietor ſhall (within three months after the expiration of each year, 8 *G. c.* 4. *ſ.* 10.) deliver an account in writing into the office, containing the quantity of fiſh exported or entred for exportation, on which the ſalt hath been uſed; together with a certificate from the officer where it is ſhipped for exportation, verifying the account; which account ſhall be alſo affirmed by the oath of the proprietor or his agent, and remain in the office; and if any of the ſalt ſhall be delivered over to any other perſon, and uſed by him in curing of fiſh, that alſo ſhall be expreſſed in the account, and ſuch perſon ſhall in like manner make another account of all the ſalt uſed by him: And if any ſuch perſon ſhall neglect or refuſe to deliver ſuch account within the ſaid time; he ſhall forfeit 40 l. 5 *G. c.* 18. *ſ.* 1.

And

And if the proprietor of ſuch ſalt ſo delivered over, ſhall not make it appear by oath or otherwiſe to the proper officer, that ſuch ſalt ſo delivered over was uſed for curing of fiſh; he ſhall be deemed guilty of imbeziling it, and forfeit 50 l. 11 *G. c.* 30. *ſ.* 41.

Alſo the ſaid account ſhall expreſs the quantity of red or white herrings entred for home conſumption, on which ſuch ſalt hath been uſed. 8 *G. c.* 4. *ſ.* 3. 8 *G. c.* 16. *ſ.* 3.

And for every buſhel of ſalt, ſo taken out of the cellar or ſalt works, which ſhall not be ſo accounted for by ſuch oath and certificate; or by certificate from the quarter ſeſſions, that proof was there made, that ſuch ſalt was put on board for curing fiſh at ſea, and was there taken by enemies, or otherwiſe loſt at ſea; or ſhall not be returned into, or found remaining in the cellar or warehouſe; the owner or other perſon ſtanding accountable for the ſame, ſhall forfeit 20 s. And the proprietor or his agent ſelling, giving away, uſing, or delivering any ſuch ſalt otherwiſe than for the purpoſes aforeſaid, ſhall forfeit 20 s. a buſhel: And every perſon buying or receiving the ſame, ſhall forfeit alſo 20 s. a buſhel: And in default of payment in 14 days after conviction, and where no ſufficient effects can be found to anſwer the ſame, he ſhall be ſent to the houſe of correction, to be whipped and kept to hard labour, not exceeding three months. 5 *G. c.* 18. *ſ.* 2.

For every caſk of pilchards or ſcads exported, containing 50 gallons, ſhall be paid by the ſalt officer an allowance of 7 s. for every hundred of cod fiſh, ling or hake (except dried ones called haberdines) of 14 inches long, from the bone in the fin to the third joint in the tail 5 s. for every barrel of wet cod fiſh, ling, or hake, of 32 gallons 2 s. for every hundred weight of haberdines 3 s. for every barrel of ſalmon of 42 gallons 4 s. 6 s. for every barrel of white herrings of 32 gallons 2 s. 8 d. for every barrel of full red herrings of 32 gallons 1 s. 9 d. for every barrel of clean ſhotten herrings of 32 gallons 1 s. for every laſt of dried red ſprats 1 s. And the officers ſhall cut off part of the tail of the codfiſh, ling and hake; and mark the caſks of the other fiſh; that it may be known that they have once had the allowance. 5 *G. c.* 18. *ſ.* 6.

And the maker or curer of red herrings, before he remove them (except for exportation) from the place of curing, ſhall make entry thereof at the next ſalt office, and pay 1 s. 8 d. a thouſand. And if they be packed up in

caſks, the number ſhall be marked on the head; and a permit ſhall be given by the ſalt officer, expreſſing the number, and the mark and number of the caſks, and for what place they are intended, and whether to be ſent by land or water; on pain of forfeiting all the red herrings removed otherwiſe, and alſo 40 s. a thouſand. 8 *G. c.* 4. *ſ.* 2. And as the duties on ſalt ſhall riſe or fall, the 1 s. 8 d. a thouſand ſhall riſe and fall proportionably *ſ.* 5.

And the maker or curer of white herrings, before he remove them (except for exportation) from the place of curing, ſhall make entry thereof at the next ſalt office, and pay 3 s. 4 d. a barrel; and the caſks ſhall be marked on the head, ſhewing the contents: then a permit ſhall be given by the ſalt officer, expreſſing the quantity, and mark and number of the caſks, and for what place they are intended, and whether to be ſent by land or water, on pain of forfeiting all the white herrings removed otherwiſe, with the caſks, and alſo 40 s. a caſk. 8 *G. c.* 16. *ſ.* 2.

And the officers at all times in the day, or in the night in preſence of a conſtable, may enter into the cellars and warehouſes, and inſpect the curing of the fiſh, and gage the ſalt, and mark the caſks, and ſee them exported; and if any perſon ſhall obſtruct them he ſhall forfeit 20 l. 5 *G. c.* 18. *ſ.* 7.

No herrings, pilchards, ſcads, codfiſh, ling, hake, ſalmon, or dried red ſprats, ſhall after they be put on board any boat or veſſel, in order to be exported, be taken out thereof, otherwiſe than to put the fiſh into the ſhips in which they are to be exported, nor put on ſhore but in the preſence of a ſalt officer; on pain that the ſame ſhall be forfeited, and alſo the ſhip and tackle; and every perſon aſſiſting therein, ſhall forfeit 20 l. or be impriſoned ſix months. 5 *G. c.* 18. *ſ.* 23. 2 *&* 3 *An. c.* 14. *ſ.* 13.

If the ſaid fiſh ſhall not be exported, for want of an opportunity, while they are good and merchantable; the owner may cauſe them to be deſtroyed in the preſence of an officer: and the officer's certificate that they were deſtroyed, ſhall be admitted to verify the account. 8 *G. c.* 4. *ſ.* 4.

No perſon ſhall cure or pack pilchards, for ſale, unleſs he be owner or part owner of a ſeyn or drift net, or have the conſent of ſuch owner in writing, and that on each caſk or hogſhead the word *ſeyn* or *drift* ſhall be burnt with

with an iron, together with the name and ſurname of the owner, and the number of pilchards; on pain of double value. 1 *An. ſt.* 1. *c.* 21. *ſ.* 31.

28. For every barrel of ſalted beef or pork exported for ſale, there ſhall be allowed 5s. a barrel, to be paid by the ſalt officer in 30 days after demand, on a debenture to be prepared by the collector of the cuſtoms, and verified by the ſearcher as to the quantity, and that it is good and merchantable: and the oath of the exporter or agent ſhall be firſt taken before the principal officers of the port, that it was ſalted with ſalt for which the duties have been paid and not drawn back, and that it is really exported for ſale, and that no part thereof was ſpent nor intended to be ſpent for the ſhip's uſe, and not intended to be relanded; and the ſalt officers, on exportation of beef or pork, may mark the barrel or veſſel, that it may be known to have been exported. 5 *An. c.* 29. *ſ.* 8. Salt for curing of beef and pork.

And if any ſuch beef or pork ſhall be relanded, it ſhall be forfeited, and alſo 40s. a barrel; to be recovered of the importer or proprietor. *ſ.* 9.

29. No perſon ſhall uſe any brine before it is boiled into ſalt, or any rock ſalt before it is refined into white ſalt for pickling or curing of fleſh or fiſh, or preſerving any proviſions; on pain of 40s. for every gallon of brine, or pound of rock ſalt. 1 *An. ſt.* 1. *c.* 21. *ſ.* 5. Uſing brine or rock ſalt for curing of fleſh or fiſh.

And every perſon who ſhall carry any brine from the ſalt pits (other than the known proprietors of pans for boiling it into white ſalt) ſhall likewiſe forfeit 40s. a gallon. 5 *G. c.* 18. *ſ.* 17.

30. Where ſalt ſhall he ſhipped on board any boat, barge, or other veſſel, in order to be carried down any river, or to be carred coaſtwiſe, for the purpoſes of the fiſhery, or to be reſhipped for exportation, or otherwiſe, and the ſame or any part thereof ſhall be landed without the preſence of an officer; all ſuch ſalt ſo landed ſhall be forfeited, and alſo 10s. a buſhel; to be recovered of the owner of the veſſel; and alſo the veſſel ſhall be forfeited, together with the furniture; and every perſon that ſhall take any ſuch ſalt out of ſuch veſſel, or carry the ſame on ſhore, or convey the ſame from the ſhore when landed, or ſhall be aſſiſting therein, ſhall forfeit 20l. 5 *G.* 3. *c.* 43. *ſ.* 41. Salt relanded from boats or other veſſels.

31. All penalties and forfeitures given by any act relating to the duties upon ſalt (except where it is herein otherwiſe Power of juſtices.

otherwise directed) shall be employed, half to the use of the king, and half to him who shall seize or inform, to be recovered in such manner, and with such power of mitigation, as any forfeiture may be by any law of excise; or in the courts at *Westminster*. And every such officer may seize all salt and other things, which by any law relating to the duties on salt are declared to be forfeited. 5 *G.* *c.* 18. *s.* 26. 24 *G.* 2. *c.* 40. *s.* 33.

And by the 5 *G.* 3. *c.* 43. In all cases, where salt or fish of any kind shall be liable to seizure, by virtue of this or any former act; the bags, sacks, casks, or other package, and also the carriages, horses, and other cattle, made use of in carrying the same, shall be forfeited, and may be seized accordingly. *s.* 45.

Appeal.

32. And if any person is aggrieved by any order of two justices relating to the duties upon salt, or to any forfeiture or offence concerning the same; he may appeal to the next quarter sessions. 10 & 11 *W.* *c.* 22. *s.* 9.

Dealer in salt not to act as a justice.

33. But no dealer in salt shall act as a justice of the peace in any matter relating to the duties upon salt; and if there shall not be a sufficient number of justices in any corporation, not dealers in salt, the justices of the county shall have power to act therein. 1 *An. st.* 1. *c.* 21. *s.* 18.

Proof to lie on the claimer, and not on the officer.

34. If any salt, as well British as foreign rock salt, or salt refined from rock salt, or red or white herrings, or any other sort of fish, be seized for non-payment of duties, or any other cause of forfeiture, by any of the laws relating to the duties on salt or fish now in force; and any dispute shall arise, whether the same had been duly entred, and the duties paid or secured; or that such salt or fish had been legally condemned; or that the salt had been duly entred and locked up for the fishery; or that the quantity of salt used in the curing of fish, as set forth in the curer's account, was used: the proof shall lie on the owner or claimer of such salt or herrings, or the curer of fish, and not on the officer. 5 *G.* 3. *c.* 43. *s.* 44.

XIII. Soap.

Duty on soap imported.

1. By the 10 *An.* *c.* 19. and 12 *An. st.* 2. *c.* 9. There shall be paid for all soap imported (over and above former duties) 3*d.* a pound; which shall be under the management of the commissioners of the customs.

Duty on soap made in the kingdom.

2. And by the said acts, there shall be paid for all soap made within the kingdom, 1½*d.* a pound.

3. And

3. And the commiſſioners of the treaſury ſhall appoint commiſſioners for the duty on ſoap made in the kingdom; who ſhall ſubſtitute inferior officers. 10 *An.* *c.* 19. *ſ.* 5. Officers for the duties on ſoap.

4. And no maker of ſoap ſhall ſet up, alter, or uſe any boiling houſe, workhouſe, warehouſe, ſtorehouſe, ſhop, room, or other place for the making or keeping of ſoap, or for the boiling or keeping any oil, tallow, pot-aſh, lime, or other materials proper to be made into ſoap; or uſe any copper, kettle, furnace, fat, ciſtern, trough, or other veſſel for the boiling or making of ſoap, without firſt giving notice thereof in writing, at the next office for the ſaid duties; on pain of 50 l. 10 *An.* *c.* 19. *ſ.* 6. Place of making to be entred.

And all ſoap, oil, tallow, and other materials, which ſhall be found in any private boiling houſe, workhouſe, warehouſe, or other place, and all private coppers, kettles, furnaces, troughs, and other veſſels, for which no entry ſhall be made, or notice given, ſhall be forfeited, and the value thereof. 10 *An.* *c.* 19. *ſ.* 19.

And by the 5 *G.* 3. *c.* 43. Whereas offenders frequently withdraw themſelves to avoid the aforeſaid penalty; it is enacted, that a ſummons left at the place where diſcovery ſhall be made of ſuch offence, directed to the perſon proſecuted by his right or aſſumed name, ſhall be as effectual as if delivered perſonally, and directed to him by his proper name. *ſ.* 19.

5. And every perſon who ſhall make any *hard* ſoap, ſhall at his own expence provide ſufficient wooden covers (to be approved of in writing by the ſurveyor or ſupervi-ſor) to every copper, pan, or other utenſil, wherein he ſhall boil or make any hard ſoap; which veſſels, with the covers thereto affixed, and alſo the pipes that convey the waſte or ſalt lees from the ſaid coppers, pans, or other utenſils, ſhall be locked and ſealed down by the officer, as ſoon as the fire is damped or withdrawn, whenever any ſoap or any thing of a ſoapy quality ſhall be left therein. Which ſaid locks, and keys to the ſame, and all other neceſſary faſtenings for ſecuring the ſaid veſſels and pipes, ſhall be provided by the ſurveyor or ſupervi-ſor, at the expence of the maker. And if any perſon ſhall make any hard ſoap before he ſhall have affixed ſuch covers, or ſhall refuſe to pay for the locks and keys and other faſtenings as aforeſaid, or ſhall wilfully break or damage any ſuch lock, or ſeal, or other faſtening; he ſhall forfeit 20 l. 5 *G.* 3. *c.* 43. *ſ.* 15. Covers and locks to be provided.

Officer to enter and ſurvey.

6. The officer ſhall at all times, by day or night, and if in the night then in preſence of a conſtable, be permitted on requeſt to enter the houſe, boiling houſe, warehouſe, or other place, uſed by any maker of ſoap; and by gaging, weighing or otherwiſe, take an account of the quantity, and thereof make return in writing to the commiſſioners or whom they ſhall appoint, leaving a true copy, if demanded, under his hand with the maker; and if he ſhall refuſe or neglect to leave ſuch copy (after demand in writing, 12 *G.* *c.* 28. *ſ.* 30.) he ſhall forfeit 40 s. 10 *An.* *c.* 19. *ſ.* 12.

And if any maker ſhall obſtruct the officer, he ſhall forfeit 20 l. *ſ.* 15.

Notice of the time of working.

7. Every maker of ſoap, before he begin any making, if within the bills of mortality, ſhall give 12 hours, if elſewhere, 24 hours notice in writing to the officer, of the time and hour when he intends to begin; on pain of 50 l. 11 *G.* *c.* 30. *ſ.* 33.

And putting lees or lye into the copper or other utenſil, ſhall be deemed a beginning ſuch making, ſo as to ſubject him to the forfeiture. *ſ.* 34.

And if the making ſhall not begin in ſix hours after the time mentioned in the notice within the bills, and in 12 hours elſewhere; the notice ſhall be void. *ſ.* 35.

And if the copper or other utenſil be locked or ſealed down, the officer ſhall attend to unlock and open the ſame, after the maker hath given to him 12 hours notice if within the limits of the head office in *London*, and elſewhere 24 hours notice, of ſuch his intention. And if by any contrivance ſuch maker ſhall open any copper, pan, utenſil, or pipe, before the ſame ſhall have been opened by the officer; he ſhall forfeit 20 l. 5 *G.* 3. *c.* 43. *ſ.* 15.

And no maker of hard ſoap ſhall, upon any pretence of cleaning or waſhing any copper, pan, or other utenſil, uſed in boiling of ſoap, or on any other pretence, preſume to light any fire under the ſame, without firſt giving ſuch notice; on pain of 20 l. *ſ.* 16.

Frames to be made uſe of in working.

8. Every maker of hard ſoap ſhall make uſe of regular ſquare or oblong frames only, for the cleanſing or putting his ſoap (whether perfect or not perfect) into, when taken out of the veſſel where it was boiled or prepared; and the bottom, ſides, and ends of every ſuch frame ſhall be 2 inches thick at the leaſt; and ſuch frame ſhall not exceed 45 inches in length, nor 15 inches in breadth; of which frames he ſhall give notice in writing at the next office, before he ſhall uſe the ſame; all which ſaid frames ſhall be

marked and numbered by the ſurveyor or ſupervisor, at the expence of ſuch maker: on pain of forfeiting, for every ſuch offence reſpectively, the ſum of 20 l. 5 *G.* 3. *c.* 43. *ſ.* 17.

9. If any ſtale or rotten ſoap, or cuttings, be put into the copper or pan, in preſence of an officer, to be refreſhed or new made; the officer ſhall make allowance of the duty, and certify the ſame upon his report. 10 *An. c.* 19. *ſ.* 28. Reworking ſtale ſoap.

But if it ſhall be put into any making of ſoap, without giving to the officer 12 hours notice in writing within the bills, and 24 hours elſewhere; there ſhall be no allowance made for it. 11 *G. c.* 30. *ſ.* 37.

And if any officer ſhall falſly pretend that he had ſuch notice when he had not, and make and certify ſuch allowance; he, and alſo the maker, ſhall forfeit 10 s. for every pound ſo certified. *ſ.* 38.

But no *hard* ſoap (whether perfectly made or not), after the ſame ſhall have been cleanſed or put into the frame, ſhall on any pretence be returned or put again into the copper or other utenſil, for boiling or reworking; and if it ſhall be ſo returned, it ſhall be charged again with the duties. 5 *G.* 3. *c.* 43. *ſ.* 18.

And the officer ſhall allow to the maker in his charge, one pound in every ten of ſuch hard ſoap; which ſhall be a full compenſation for all waſte, loſſes or damages. *ſ.* 14.

10. And the maker ſhall keep ſcales and weights where he makes his ſoap, and permit and aſſiſt the officer to uſe them; on pain of 10 l. 10 *An. c.* 19. *ſ.* 13. Scales and weights.

11. And the officer ſhall be permitted to take an account of the quantities of oil, tallow, pot-aſhes, lime, and other materials proper to be made into ſoap, that ſhall be in the maker's poſſeſſion; and if the officer ſhall miſs any quantity of them, which he had taken account of the laſt time he was there, and ſhall not on reaſonable demand receive ſatisfaction what is become of them, the officer may charge him with ſuch quantity of ſoap, as ſuch materials in his judgment would have made, not exceeding 14 gallons of ſuch ingredients (beſides the lees) for every barrel. 10 *An. c.* 19. *ſ.* 14. Officer to charge for materials miſſing.

12. And no maker ſhall (on pain of 20 l.) remove any ſoap of which no account hath been taken by the officer, from where it was made, without giving the officer within the bills 24 hours notice, and in other parts two days notice, of his intention to remove the ſame. 10 *An. c.* 19. *ſ.* 16. Removing ſoap unſurveyed.

Unsurveyed to be kept separate.

13. And the makers shall keep all the soap by them made, and not surveyed, separate from that which hath been surveyed, for 24 hours after making, within the bills, or two days in any other place; unless it shall have been sooner surveyed; on pain of 5 l. 10 *An. c.* 19. *s.* 17.

Concealing.

14. And if any maker shall conceal any soap or materials; he shall forfeit the same, and also 500 l. 1 *G. st.* 2. *c.* 36. *s.* 14, 15.

And by the 5 *G.* 3. *c.* 43. If the officer shall have cause to suspect, that soap is privately making in any place; or that any soap is concealed with intent to avoid the duty; in such case, on oath made by such officer before a commissioner or one justice residing near to the place, setting forth the ground of his suspicion, such commissioner or justice may, if he shall judge it reasonable, by special warrant authorize such officer, by day or night (but if in the night, in presence of a constable) to enter into every such place suspected, and to seize and carry away as forfeited all such soap as he shall there find so privately making, together with all materials then ready or preparing for making of soap, and likewise all such soap as they shall find so concealed, together with the boxes or other package: And the person that shall be found privately making soap, or in whose possession such soap shall be found, shall forfeit 100 l. *s.* 20.

Entry of soap made.

15. The maker within the bills shall monthly, and elsewhere every six weeks, make entry in writing at the next office, of all the soap by him made within the said month or six weeks, setting forth the weight, and what quantity was made at each boiling in the several weeks; on pain of 50 l. Which entries shall be on the oath of the maker, or chief workman, according to the best of his knowledge and belief. The said entry and oath within the bills, to be at the general office, and elsewhere with the collector and supervisor. 10 *An. c.* 19. *s.* 9.

But no maker shall be obliged to send further to make entry, than to the next market town. *s.* 10.

Measure of soap.

16. And the measure of soap shall be this; every barrel shall contain 256 lb. averdupois: half barrel 128; firkin 64; half firkin 32; besides the weight or tare of the cask. And all soap (except hard cake soap, and ball soap, 10 *An. c.* 26. *s.* 111.) shall upon making thereof be put by the maker into such cask, and none other. 10 *An. c.* 19. *s.* 8.

And all soft soap that shall be filled in any other cask less than barrels, half barrels, firkins, and half firkins,

firkins, ſhall be forfeited, and alſo 5 l. 12 *An. ſt.* 2. *c.* 9. *ſ.* 19.

17. The maker within the bills, ſhall within four weeks, and elſewhere within ſix weeks after entry, clear off the duties; on pain of double duty; and no maker, after ſuch default in payment, ſhall ſell or deliver out any ſoap, till he hath paid off his duty; on pain of double value. 10 *An. c.* 19. *ſ.* 11. Payment of the duties.

18. By the 10 *An. c.* 19. Any perſon who ſhall uſe ſoap in making of cloths, or other manufactures of ſheeps or lambs wool only, or manufactures whereof the greateſt part of the value of the materials ſhall be wool; or in finiſhing the ſaid manufactures; or preparing the wool for the ſame; or in whitening new linen in the piece, (or his chief workman) —— may make proof in writing by affidavit, before the collector or ſupervisor, ſpecifying the kinds and quantity of the manufactures, and the days between which, and the places where the ſame were made, prepared, or whitened, and the quantity and kind of ſoap conſumed therein, and that no allowance for the duty on ſuch ſoap hath been made: whereupon the collector ſhall repay the duty on ſuch ſoap. *ſ.* 29. Drawback for ſoap uſed in the woollen manufacture.

And the ſaid affidavit need not be ſtamped; and no fee ſhall be taken, except 4 d. for writing the affidavit, on pain of treble damages to party grieved, with full coſts; to be recovered as the other penalties. *ſ.* 30.

And any perſon making falſe affidavit, ſhall forfeit treble value of the allowance; and for the ſecond offence (on conviction in the courts at *Weſtminſter*) ſhall ſuffer as for wilful perjury. *ſ.* 31. And the like is enacted by the 12 *An. ſt.* 2. *c.* 9. *ſ.* 16, 17, 18. in regard to the additional duties by that act.

19. Cocquets granted for ſhipping ſoap, to be landed in any other part of the kingdom, ſhall expreſs the quality, quantity, and weight, the mark of the package, and by whom made and ſold, and where conſigned; and if ſhipped without ſuch cocquet, the ſame ſhall be forfeited, and ſeized, together with the package. 23 *G.* 2. *c.* 21. *ſ.* 29. Soap carried coaſtwiſe.

20. No ſoap ſhall be imported, otherwiſe than in ſome package, containing at leaſt 224 pounds of neat ſoap, and ſtowed openly in the hold; on pain of being ſeized and forfeited, together with the package, and the maſter of the veſſel to forfeit 50 l. 23 *G.* 2. *c.* 21. *ſ.* 27. Importation and exportation.

But on information brought againſt any ſuch maſter, he may detain the wages of the mariners, till it be deter-

mined; and if it ſhall appear, that the ſoap was put on board by any mariner without the maſter's knowledge, the maſter may apply the wages of ſuch mariner, in payment of the forfeiture. 26 *G.* 2. *c.* 32. *ſ.* 8.

And the officers of exciſe (in like manner as the officers of the cuſtoms) may go on board any veſſel, and ſearch for and ſeize all ſoap forfeited, together with the package; and they may likewiſe ſeize ſuch as before entry and payment of duties, ſhall be found unſhipping or unſhipped. 23 *G.* 2. *c.* 21. *ſ.* 28.

Soap that hath paid the duty may be exported; and the duties ſhall be drawn back. 10 *An.* *c.* 19. *ſ.* 22, 23, 24. But no drawback ſhall be allowed on the exportation of any foreign ſoap imported. 23 *G.* 2. *c.* 21. *ſ.* 36.

The officers of exciſe or cuſtoms may ſeize any ſoap with the package, that ſhall be found in any veſſel, cart, or other carriage; where they ſhall have good reaſon to believe that the ſame was made in ſome private workhouſe, or clandeſtinely imported without payment of duty, or that the ſame has been exported and relanded after repayment of the duty; and if the party in whoſe poſſeſſion the ſame ſhall be found, ſhall not at the hearing of the information, make it appear that the duty hath been paid or ſecured, he ſhall forfeit 5 l. for every 100 pounds weight; and alſo the goods and package ſhall be forfeited. 23 *G.* 2. *c.* 21. *ſ.* 31.

And if any perſon ſhall knowingly harbour or conceal any ſoap unlawfully imported, or relanded after ſhipping for exportation upon debenture; he ſhall, whether he claims any property therein or not, forfeit 50 l. for every hundred weight, together with the goods and package. 23 *G.* 2. *c.* 21. *ſ.* 32.

And where any ſuch ſoap ſhall be ſeized as forfeited, and no perſon ſhall claim the ſame in 20 days, if it is within the limits of the chief office of exciſe in *London*, the officer who made the ſeizure may cauſe notice ſigned by the ſolicitor of exciſe, to be affixed at the *Royal Exchange*, of the time of proceeding to trial and condemnation of the ſame by the commiſſioners of exciſe; and if it is out of the ſaid limits, then publick notice ſhall be given by proclamation at the next market town, on the market day next after the ſaid 20 days, of the day and place where the juſtices will proceed to trial and condemnation thereof. And the judgment thereon ſhall not be liable to any appeal, or be removed by certiorari. 23 *G.* 2. *c.* 21. *ſ.* 33.

21. The

21. The excise laws shall be in force for managing these duties; and the penalties (except where it is otherwise herein directed) shall be recovered and mitigated as by the laws of excise, or in the courts at *Westminster*; and distributed, half to the king, and half to him that shall sue. 10 *An. c.* 19. *s.* 26. 11 *G. c.* 30. *s.* 39. 24 *G.* 2. *c.* 40. *s.* 33. Power of the justices.

22. And where any soap shall be seized for non-payment of duties, or non-entry, and it shall be disputed whether such payment or entry were made or not, the proof shall lie on the claimer, and not on the officer, 23 *G.* 2. *c.* 21. *s.* 35. Proof to lie on the claimer.

23. And if the party is not satisfied with any judgment of the justices on the act of 23 *G.* 2. *c.* 21. abovementioned, he may appeal to the next quarter sessions (except in the case before mentioned, where no person shall claim the goods seized). *s.* 37. Appeal.

24. And on information on the said act of the 23 *G.* 2. the mitigation shall not reduce the penalty to less than a fourth part, over and above the costs to be allowed. *s.* 38. Mitigation.

25. And all soap, materials, and utensils in the custody of the maker, or of any in trust for him, shall be liable to the duties and penalties, as if the debtor or offender were the lawful owner. 10 *An. c.* 19. *s.* 20. Utensils liable.

XIV. Spirituous liquors.

So far as running of brandy and other spirituous liquors falleth in with the running of other uncustomed goods; see the first part of this title concerning the **Customs in general.**

1. By the several acts a general duty of excise is laid on every gallon of spirituous liquors imported (over and above the customs) as follows; *viz.* Duty on importation.

Single brandy, spirits or aqua vitæ, 4 s. 8 d. Double brandy, spirits, or aqua vitæ, 8 s. 8 d.

Which shall be raised as the duties on other exciseable liquors. 12 *C.* 2. *c.* 23. 12 *C.* 2. *c.* 24. 4 *&* 5 *W.* *c.* 3. 4 *An. c.* 6. 6 *G.* 2. *c.* 17.

Arrack from the *British* colonies in the *East Indies*, the same as for brandy and foreign spirits imported.

And by the 32 *G.* 2. *c.* 10. there shall be paid an additional duty of 12 d. in the pound, according to the value in the book of rates, on all foreign brandy and spirits imported

ported (except rum, of the produce of the *British* sugar plantations.) *s.* 1.

And by the 33 *G.* 2. *c.* 9. over and above all other duties, there shall be paid an additional excise duty of 1 s. for every gallon of single brandy, spirits, or aqua vitæ, imported; and of 2 s. for every gallon of brandy, spirits, or aqua vitæ above proof, commonly called double brandy, imported. *s.* 8, 9.

And by the 6 *G.* 3. *c.* 47. for every gallon of single brandy, spirits, or aqua vitæ imported, not being the produce of the *British* colonies or plantations, a further excise duty of 6 d; above proof, 1 s.

Officers may take samples on ship-board.

2. To enable the gagers the better to ascertain the proof of all foreign imported liquors liable to the duties of excise; it shall be lawful for the gagers or other officers of excise, at any time before the gaging, to take a sample not exceeding half a pint, out of each cask or other package containing foreign spirituous liquors imported, without paying any thing for the same. 32 *G.* 2. *c.* 29.

Landing without duty paid.

3. And if any person shall land any *French* brandy, before the duty be paid or secured, or without licence from the proper officer so to do; he, and every person aiding therein, or concealing the same when landed, shall not only forfeit the same, but also double value. 1 *An. st.* 2. *c.* 14.

And if any officer of the customs or excise shall connive thereat; he shall be incapable to hold any office in the revenue, and forfeit 500 l. *s.* 2.

Excise officers may go on board.

4. And the officers of excise may go on board any ship or vessel, and search in like manner as the officers of the customs may do, for any exciseable liquors, and seize all such as shall be forfeited, and such as shall be unshipped before entry and payment of the duties, together with the casks and other package. 11 *G.* *c.* 30. *s.* 1.

Warrant to search.

5. And if any officer of the excise have cause to suspect, that any foreign spirits shall be fraudulently concealed in any place, entred or not entred, if it is within the bills of mortality, then on oath made before two commissioners, if elsewhere, before one justice, where he suspects them to be concealed, setting forth the ground of his suspicion; he or they may by special warrant authorize such officer by day or night, but if in the night in presence of a constable, to enter, seize, and carry away the same as forfeited, together with the casks or vessels: and if any person shall obstruct such officer, he shall forfeit 100 l. 11 *G.* *c.* 30. *s.* 2.

6. And by a general clauſe in the 8 *G. c.* 18. All brandy, arrack, rum, ſpirits, and ſtrong waters, *Britiſh* or foreign, and all foreign exciſeable liquors forfeited, together with the caſks or other package, may be ſeized by any officer of the cuſtoms or exciſe, or perſons deputed by warrant from the lord treaſurer, or under treaſurer, or by ſpecial commiſſion under the great or privy ſeal, and no other perſon. *ſ.* 24. Who only may ſeize.

7. And if any perſon ſhall obſtruct any officer of the cuſtoms or exciſe, in ſeizing or ſecuring any of the ſaid liquors, or endeavour to reſcue them after ſeizure, or ſhall after ſeizure ſtave, or otherwiſe damage any caſk, or veſſel; he ſhall forfeit 40 l. 8 *G. c.* 18. *ſ.* 25. Obſtructing the officer.

8. But no perſon ſhall be intitled to any reward given on ſuch ſeizure, unleſs he give notice to the next officer of exciſe, or to the ſupervifor, in 48 hours; who ſhall, on ſuch notice, take an account of the ſpecies and quantity; nor ſhall ſuch goods be afterwards removed without a permit from ſuch officer of exciſe, on pain of being reſeized. 12 *G. c.* 28. *ſ.* 6. Notice to be given of ſeizure.

9. If any foreign brandy, arrack, rum, ſtrong waters, or ſpirits of any kind ſhall be imported, in any ſhip or veſſel of 100 tons burden or under (except only for the uſe of the ſeamen, not exceeding two gallons each); ſuch veſſel with her tackle, and alſo the ſpirits, ſhall be forfeited. 5 *G.* 3. *c.* 43. *ſ.* 27.——Except rum, or other ſpirits of the growth and manufacture of the *Britiſh* ſugar plantations; which may be imported in any veſſel of not leſs burden than 70 tons. 6 *G.* 3. *c.* 46. *ſ.* 9 In what ſhips to be imported.

And to prevent clandeſtine landing of ſpirits from *Ireland*; if any brandy, rum, ſtrong waters or other ſpirits ſhall be entred or ſhipped for exportation from *Ireland*, to any place not within the ſame kingdom, in any veſſel under the burden of 100 tons (except only for the uſe of the ſeamen, not exceeding two gallons each); the ſaid veſſel with the tackle and furniture, and alſo all ſuch ſpirits, ſhall be forfeited. *ſ.* 30.

10. And where any veſſel of 50 tons or under, being in part or fully laden with brandy, ſhall be at anchor, or within two leagues from the ſhore, and not proceeding on her voyage, wind and weather permitting; the commander of any man of war or armed ſloop appointed for the guard of the coaſt, or the commander of any ſloop or veſſel in the ſervice of the cuſtoms, may compel the maſter to come into port; and the ſame ſhall be liable in all caſes Ships hovering near the coaſt.

as

as ſhips hovering within the limits of any port. 6 *G.* *c.* 21. *ſ.* 31.

And if the maſter, purſer, or other perſon having charge of the veſſel, ſhall ſuffer any brandy (or other uncuſtomed goods) to be put out of the ſhip into any hoy, lighter, boat, or bottom, to be laid on land; he ſhall, beſides the other penalties, ſuffer ſix months impriſonment. 6 *G.* *c.* 21. *ſ.* 32.

And by the 9 *G.* 2. *c.* 35. Where *any* veſſel coming from foreign parts, and having on board any foreign brandy or ſpirits, in caſks under ſix gallons (except only for the uſe of the ſeamen, not exceeding two gallons each) ſhall be found at anchor, or hovering within two leagues of the ſhore, or be within the limits of any port, and not proceeding on her voyage, wind and weather permitting; all ſuch ſpirits, with the caſks and other package, or the value thereof, ſhall be forfeited (whether bulk ſhall have been broken or not); and the ſame may be ſeized, or the value thereof ſued for by the officers. *ſ.* 22. And if ſuch veſſel do not exceed the burden of 50 tons, the ſaid veſſel alſo, together with her tackle and furniture, ſhall be forfeited. 3 *G.* 3. *c.* 5. *ſ.* 5.

In what caſks to be imported.

11. No brandy ſhall be imported in any veſſel not containing 60 gallons at the leaſt; on pain of forfeiting the ſame, or the value. 4 *W.* *c.* 22. *ſ.* 8.

And no *geneva*, of *rum*, ſhall be imported in any veſſel or caſk, not containing 60 gallons at the leaſt (except only for the uſe of the ſeamen, not exceeding two gallons each); on pain of forfeiture. 5 *G.* 3. *c.* 43. *ſ.* 28.

Provided, that if it ſhall be made appear to the ſatisfaction of the commiſſioners of the cuſtoms, that any rum, being the produce of any of his majeſty's dominions in *America*, ſhall be imported from thence in ſmall caſks, without fraud or concealment, either for the uſe of the maſter in the voyage, or for the private uſe of merchants or traders importing the ſame, or deſigned as preſents, and not by way of merchandize; they may, if they think proper, admit ſuch rum to an entry, and cauſe the duties to be accepted inſtead of the forfeiture. *ſ.* 29.

Rum to be warehouſed on importation.

12. All rum or ſpirits of the growth or manufacture of the *Britiſh* ſugar colonies (imported directly from thence) on entry made (within 30 days after report made by the maſter or purſer of the contents and loading of the ſhip, 31 *G.* 2. *c.* 36. *ſ.* 5, 6.) and before payment of the duty, may be landed and put into warehouſes, provided at the charge of the proprietor or importer, and approved of by the

the commiſſioners; the proprietor or importer firſt giving bond for payment of the duty, if it be ſold (within 12 calendar months; and if it be not ſold in that time, then to pay the duty at the end of 12 calendar months, 6 *G.* 3. *c.* 47. *ſ.* 4.) according to the gage taken, at the time of landing and lodging in the warehouſe. 15 *G.* 2. *c.* 25. *ſ.* 1.

And if any rum or ſpirits be landed, before entry at the cuſtom houſe and with the collector of exciſe, and the duties ſecured, or without warrant for landing, or without the preſence of an exciſe officer; the ſame ſhall be forfeited, or the value thereof. *ſ.* 3.

And before it be landed and lodged in the warehouſe, a mark ſhall be ſet upon every caſk, mentioning the quantity, and the proprietor or importer; and the warehouſe keeper and exciſe officer ſhall each keep a book, and enter the particulars carried in or out, and when, and for whoſe uſe delivered; and every ſix months, or oftner if required, tranſmit an account thereof in writing, and on oath, to the commiſſioners of exciſe, who ſhall in one month examine the ſame: and if any rum or ſpirits ſhall be delivered contray to this act, the warehouſe keeper or officer offending ſhall be diſabled from holding any publick employment, and forfeit 100 l. *ſ.* 4.

And the rum or ſpirits may be delivered out of the warehouſe, on payment of the exciſe, and on producing to the warehouſe keeper, and the exciſe officer attending the warehouſe, a certificate of ſuch payment; and the warehouſe keeper ſhall give a permit therewith, ſigned by the exciſe officer, to prevent the ſeizing thereof. *ſ.* 5.

But no proprietor, importer, or buyer, ſhall receive out of the warehouſe leſs than one veſſel of 20 gallons, unleſs for the uſe of ſeamen in a voyage. *ſ.* 6.

And the proprietor or importer may fix a lock on the warehouſe and keep the key; and the exciſe officer may put on another, and keep the key; and the proprietor or importer may in preſence of the warehouſe keeper, or exciſe officer, at all reaſonable times, view, and take out as aforeſaid. *ſ.* 7.

And if any rum or ſpirits remain in the warehouſe above (12 calendar months, 6 *G.* 3. *c.* 47. *ſ.* 4.) without paying the duty, the commiſſioners of exciſe may ſell them by auction, and pay themſelves the duty and charges, rendring the overplus to the proprietor or importer. *ſ.* 9.

13. For

Duty on home ſpirits.

13. For every gallon of ſpirits made of imported wine or cyder, ſhall be paid in the whole ſum of 1 s. 3 d.

For every gallon of ſtrong waters or aqua vitæ, made of any other materials, 7½ d.

If from foreign or from home materials mixed with foreign; then a further duty of 6 d.

If from brewers waſh or tilts, 5½ d.

If from drink brewed of malted corn, 5½ d.

If from other *Britiſh* materials, or any mixture therewith, 5 d.

For every gallon of low wines or ſpirits of the firſt extraction, made from foreign materials, 1 s. 7 d.

From brewers waſh or tilts, 1 s. 4 d.

From drink of malt, 5 d.

From any other *Engliſh* materials, 7 d.

But low wines or ſpirits of the firſt extraction drawn from melaſſes only, ſhall be liable only to 1 s. a gallon; and all ſpirits from low wines, or ſpirits of the firſt extraction, drawn from melaſſes only, ſhall be chargeable with 6 d. a gallon. 19 *G.* 2. *c.* 12. *ſ.* 37.

Note; All ſpirits drawn by any diſtiller from any mixture of ſpirits with any kind of waſh or other liquor (except common water) ſhall be deemed low wines, and chargeable with the duties impoſed on low wines drawn from foreign materials. 10 & 11 *W.* *c.* 4. *ſ.* 9.

Moreover by the 33 *G.* 2. *c.* 9. an additional duty is laid as follows:

For every gallon of low wines, or ſpirits of the firſt extraction, made from any ſort of drink or waſh, brewed or made from any ſort of malt or corn, or from brewers waſh or tilts, or any mixture with brewers waſh or tilts, 5 d. *ſ.* 2.

For every gallon of ſtrong waters or aqua vitæ, made for ſale, of the materials aforeſaid, or any of them, 1 s. 3 d. *ſ.* 3.

For every gallon of low wines or ſpirits of the firſt extraction, made from any foreign or imported materials, or any mixture therewith, 1 s. 3 d. *ſ.* 4.

For every gallon of ſpirits, made from any foreign, or imported materials, or any mixture therewith, 8 d. *ſ.* 5.

For every gallon of low wines or ſpirits of the firſt extraction made from cyder or any kind of *Britiſh* materials, except thoſe before mentioned, or any mixture therewith, 6¼ d. *ſ.* 6.

For

For every gallon of ſpirits, made for ſale, from cyder or any kind of *Britiſh* materials, except thoſe before mentioned, 1 s. 1 ¾ d. *ſ.* 7.

And by the 2 *G.* 3. *c.* 5. There ſhall further be paid, for ſpirituous liquors made for home conſumption, or imported (not being the produce of the *Britiſh* colonies), theſe ſeveral additional duties:

For every gallon of low wines or ſpirits of the firſt extraction, made from any ſort of drink or waſh brewed, or made from any ſort of malt or corn, or from brewer's waſh or tilts, or any mixture with brewer's waſh or tilts, 1 d.

For every gallon of ſtrong waters or aqua vitæ, made for ſale, of the materials aforeſaid or any of them, 3 d.

For every gallon of low wines or ſpirits of the firſt extraction, made from any foreign or imported materials, or any mixture therewith, 3d.

For every gallon of ſpirits, made from any foreign or imported materials, or any mixture therewith, 2 d.

For every gallon of low wines or ſpirits of the firſt extraction, made from cyder, or any kind of *Britiſh* materials (except thoſe before mentioned) or any mixture therewith, 1 ³d.

For every gallon of ſpirits made for ſale, from cyder, or any kind of *Britiſh* materials (except thoſe before mentioned), 2 d.

For every gallon of ſingle brandy ſpirits or aqua vitæ imported (not being the produce of the *Britiſh* colonies), 6 d.

For every gallon of brandy ſpirits or aqua vitæ above proof, commonly called double brandy, imported, not being the produce of the *Britiſh* colonies, 1 s. *ſ.* 1.

Note; Spirits made for *exportation* ſhall be duty free (as will appear afterwards).

14. Any perſon who ſhall ſet up any work or office for that purpoſe, and thereof ſhall give notice to the commiſſioners of exciſe in ten days, may diſtill for ſale, or to be retailed, any low wines or ſpirits from drink brewed from malted corn or cyder, and rectify and refine any ſuch ſpirits of their own making only, paying duties and ſubject to the ſame regulations as other diſtillers. 8 & 9 *W.* *c.* 19. *ſ.* 13. Concerning diſtillers.

And by the 12 *An. ſt.* 2. *c.* 3. Any perſon may diſtill brandy or ſpirits made from *Britiſh* malt or cyder,

der, altho' he hath not ſerved ſeven years apprenticeſhip. *ſ.* 9.

And by the 2 *G.* 3. *c.* 5. Every perſon who ſhall ſell or deal in any liquors which are chargeable with any duty of exciſe, and who ſhall alſo make or diſtill any ſpirits, ſhall be deemed a common diſtiller for ſale, and liable to the ſurvey and duties. *ſ.* 4.

Size of the ſtills. 15. But no perſon who ſhall make or rectify any ſpirits for ſale, or who ſhall ſell or deal in any ſort of ſpirituous liquors, ſhall have any ſtill or number of ſtills, unleſs ſuch ſtill if a ſingle one, or ſuch ſtills taken together if more than one, ſhall contain at the leaſt 100 gallons; on pain to forfeit for every ſuch ſtill 100 l. And ſuch ſtills as ſhall contain ſeparately leſs than 100 gallons, ſhall be all placed in one room or workhouſe; on pain to forfeit for every ſuch ſtill not ſo placed, 100 l. 2 *G.* 3. *c.* 5. *ſ.* 4.

Notice of houſes, ſtills, and veſſels. 16. No common diſtiller or maker of low wines, ſpirits, or ſtrong waters, for ſale, ſhall ſet up any tun, caſk, waſhbatch, copper, ſtill, or other veſſel, for making or keeping any worts, waſh, low wines ſpirits, or ſtrong waters, nor alter nor enlarge the ſame, nor have any of them private or concealed, or any private warehouſe, ſtorehouſe, cellar, or other place for making or keeping any the ſaid liquors, without firſt giving notice at the next office of exciſe; on pain of 20 l. and he in whoſe occupation any of the ſame ſhall be, ſhall forfeit 50 l. 8 & 9 *W.* *c.* 19. *ſ.* 10.

And if any officer of exciſe ſhall have cauſe to ſuſpect any ſuch private ſtill, back, or other veſſel, ſpirits, low wines, waſh or other materials prepared for diſtillation, to be ſet up or kept in any place, and ſhall make affidavit before a juſtice of the peace, and therein declare the grounds of his ſuſpicion; he may in the day time, and in preſence of a conſtable, by warrant from ſuch juſtice to be directed to ſuch officer of exciſe, break open the door or any part of ſuch ſuſpected houſe or place, and enter and ſeize the ſame, and detain them there; and if they ſhall not in 20 days be claimed by the owner, they ſhall be forfeited, and ſold at the next general day of ſale; and if they be claimed in 20 days, the perſon claiming ſhall forfeit for every warehouſe or other place, in which any ſuch ſtill, back, or other veſſel ſhall be found, and alſo for every ſuch ſtill, back, and other veſſel found therein, 200 l. 10 & 11 *W.* *c.* 4. *ſ.* 7. And by the 10 & 11 *W.* *c.* 21. he ſhall incur this

this forfeiture, whether he ſhall make any ſuch claim or not. *ſ.* 23.

But if on breaking open any ſuch door or houſe, no ſuch private back, ſtill, or other veſſel, ſpirits, low wines, waſh, or other materials for diſtillation, ſhall be found, the officer ſhall make good the houſe or place ſo broken up, or make ſatisfaction to the owner to be adjudgd by the two next juſtices (1 *Q.*); or the party injured may bring his action for the damages; and the ſame ſhall be paid by the commiſſioners out of the revenue of exciſe; and if any perſon ſhall obſtruct ſuch officer, he ſhall forfeit 200l. 10 & 11 *W.* *c.* 4. *ſ.* 8.

17. Every diſtiller ſhall ten days before he diſtills or makes any ſpirituous liquors, make entry at the next office of exciſe, of every ſtill and other veſſel which he ſhall make uſe of for brewing, diſtilling, working, making, laying or keeping any worts, waſh, low wines, ſpirits, or ſtrong waters; and alſo of the veſſels uſed for brewing or keeping of the after runnings or feints from the ſecond extraction (which laſt mentioned veſſels ſhall not at any one time exceed two in number) and alſo of all ſuch new utenſils as they ſhall make uſe of for the purpoſes aforeſaid, on pain of 50l. for every ſuch ſtill or other veſſel, uſed and not entred: And the diſtiller ſhall ſhew to the officer every ſtill or other veſſel entred, and the officer ſhall mark the ſame with a particular and durable mark; and every veſſel uſed by ſuch diſtiller without being ſo ſhewn or marked, ſhall be deemed a veſſel or utenſil of which no entry has been made; and if any perſon ſhall rub out or deface ſuch mark, he ſhall forfeit 20l. 24 *G.* 2. *c.* 40. *ſ.* 22. Veſſels to be marked.

18. No diſtiller ſhall have any private pipe or ſtop cock, or other conveyance, by which any waſh or other liquors fit for diſtillation may be conveyed from one back or veſſel to another, or from any ſuch back or veſſel to his ſtill, or into any other place, nor ſhall have any hole in any back or waſhbatch, by which any waſh or other liquor fit for diſtillation may be conveyed into or out of the ſame; on pain of 100l. 10 & 11 *W.* *c.* 4. *ſ.* 3. Private cocks and pipes.

And the exciſe officer in the day time, and in preſence of a conſtable, on requeſt made and cauſe declared, may break up the ground in any diſtilling houſe, or the ground near adjoining, or any wall, partition, or other place, to ſearch; and on finding ſuch pipe or other conveyance, may break up the ground, houſe, wall, partition, or other place, thro' or into which any ſuch pipe or other convey-

conveyance ſhall lead, and may break or cut any ſuch pipe or other conveyance, and may turn any cock to try whether ſuch pipe may convey any waſh or other liquor. *ſ.* 4.

And if no ſuch pipe or private conveyance be found, the officer ſhall make good the ground, wall, houſe, or other place, or make reaſonable ſatisfaction to the owner, to be adjudged by the two next juſtices (1 Q.) or the party injured may bring his action for damages; the ſame to be paid by the commiſſioners out of the revenue of exciſe. And if any perſon obſtruct ſuch officer, he ſhall forfeit 100l. *ſ.* 5.

But any diſtiller may uſe any pipe, ſtop cock, or other conveyance above ground, in open view from one end to the other, for letting his waſh out of the coolers into his backs or waſhbatches, and for conveying the waſh or worts, out of the back or waſhbatch into the ſtill. *ſ.* 6.

Notice of taking in materials.

19. The diſtiller, within the bills, ſhall 24 hours at leaſt, and elſewhere 48 hours, before he receive any quantity of wine, cyder, ſugar, water, or any kind of fermented waſh, into his cuſtody, give notice to the officer of exciſe, of the quantity and ſpecies, and when he intends to receive the ſame; on pain of 50l. 24 *G.* 2. *c.* 40. *ſ.* 24.

And by the yearly malt acts, every diſtiller who ſhall receive any quantity of cyder or perry into his cuſtody, ſhall give notice in writing to the officer under whoſe ſurvey he ſhall reſide, 48 hours before he ſhall begin to put any of the ſame into the ſtill, to be drawn into low wines or ſpirits; and if he ſhall not give ſuch notice, or ſhall diſpoſe of any quantity thereof otherwiſe than by diſtillation, he ſhall forfeit 5l.

Notice of beginning to work.

20. No diſtiller ſhall begin to charge his ſtill, with waſh, ſpirits, or other materials, without giving ſix hours notice to the officer of the diviſion, unleſs at ſuch times as are herein after mentioned, that is to ſay, from *Sep.* 29, to *Mar.* 25, yearly, between the hours of five in the morning and eight in the evening; and from *Mar.* 25, to *Sep.* 29, yearly, between three in the morning and nine in the evening: And if he ſhall not begin to charge his ſtill at the time mentioned in ſuch notice, or within one hour after, the notice ſhall be void; and he ſhall be obliged to give another like notice before he begins: And if he ſhall begin to charge his ſtill (except within the reſpective times aforeſaid)

aforesaid) without having given such notice; he shall forfeit 100l. 33 *G.* 2. *c.* 9. *s.* 22.

21. If any distiller, in preparing his grist for wash, in order for distillation, shall use more wheat, than in the proportion of one quarter of wheat to two quarters of any other grain; he shall forfeit 50l. 33 *G.* 2. *c.* 9. *s.* 23. What proportion of wheat to be used.

22. The excise officers by day or by night (but if in the night, in presence of a constable) may enter into all houses and places made use of by distillers or dealers in the said liquors, and by tasting, gaging, or otherwise, may take an account of the quantity and quality; and if such person shall obstruct the officer, he shall forfeit 50l. 6 *G.* *c.* 21. *s.* 14. Officer to enter and survey.

23. And the officer may take a sample of the low wines or spirits, and of the feints and spent wash, paying for such spirits or low wines after the rate of 10s. a gallon, and for the feints and spent wash 1s. a gallon; and if any distiller, his workman or servant, shall refuse to permit him to take such samples, or shall obstruct him in taking thereof, he shall forfeit 50l. 24 *G.* 2. *c.* 40. *s.* 23. Officer may take a sample in the working.

24. If the distiller or maker shall conceal any the said liquors from sight of the gager, he shall forfeit 5s. a gallon. 3 *W.* *c.* 15. *s.* 2. Concealing from the gager.

25. The officer may keep an account of the several sorts of wash which shall be found by him in the hands of a distiller, and upon any decrease of such wash brewed or made from malted corn or corn unmalted, may charge such distiller with so much low wines or spirits of the first extraction as one fourth part of the same wash so decreased shall amount unto; and also with so much proof spirits or spirits of the second extraction, as three fifth parts of the said low wines so charged shall amount unto: and also upon any decrease of wash made from cyder or perry, may charge such distiller upon whom such decrease shall be found, with so much low wines or spirits of the first extraction, as one fifth part of the same wash so decreased shall amount unto; and likewise with so much proof spirits, or spirits of the second extraction, as one half part of the same low wines or spirits of the second extraction shall amount unto. 4 *An.* *c.* 12. *s.* 4. Officer to charge for materials missing.

26. No distiller shall deliver or carry out any low wines, spirits, or aqua vitæ, to any of their customers, in cask, or by the gallon, without notice thereof first given to the officer of excise, unless from *Sep.* 29, to *Mar.* 25, yearly, between five in the morning and eight in the evening, Carrying out of the still house.

evening, and from *Mar.* 25, to *Sep.* 29, yearly, between three in the morning and nine in the evening; on pain of 10l. 7 & 8 *W.* *c.* 30. *ſ.* 15.

Selling on ſhipboard.

27. Whereas till of late the importers or proprietors of foreign ſpirituous liquors, or their factors or agents, were permitted to take ſamples and land the ſame without duty paid, whereby they were enabled and did for the moſt part ſell ſuch foreign ſpirituous liquors whilſt on ſhipboard; and whereas for ſome time laſt paſt, ſuch permiſſion hath been refuſed, which hath proved a great inconvenience to the ſaid trade; it is enacted, that it ſhall be lawful for the importers or proprietors of ſuch foreign ſpirituous liquors, their factors or agents, to take, in the preſence of a gager or other exciſe officer, a ſample or ſamples, not exceeding half a pint in the whole, out of every caſk or other package, whilſt the ſame ſhall be on ſhipboard, and before landing, without paying any duty for the ſame. 32 *G.* 2. *c.* 29. *ſ.* 1.

Retailers houſes to be entred.

28. Every perſon who ſhall retail leſs than two gallons, ſhall ten days before make entry in writing of all warehouſes, ſhops, cellars, or other places by him intended to be uſed, at the next exciſe office; and of all ſpirituous liquors therein; on pain of 20l. for every place, and 40s. for every gallon not entred, and alſo the liquors and caſks. 9 *G.* 2. *c.* 23. *ſ.* 6.

Retailer to give notice of bringing in.

29. And no ſpirituous liquors ſhall be brought into any ſuch warehouſe or other place, without firſt giving notice to the officer of exciſe; and leaving with him an authentic certificate, that all the duties are paid, or that they have been condemned as forfeited, and expreſſing the quantity and quality, the name of the ſeller, and where the duties were paid, or the liquors condemned; on pain of 20l. and the liquors and caſks. 9 *G.* 2. *c.* 23. *ſ.* 7.

Permit on bringing in.

30. No *foreign* brandy or ſpirits, altho' under one gallon ſhall be received into the cuſtody of any retailer, without a permit ſignifying that the duties were paid, or that it had been condemned; on pain of forfeiting the ſame, and the veſſel. 8 *G.* *c.* 18. *ſ.* 13.

Britiſh to be kept ſeparate from foreign ſpirits.

31. All dealers in foreign brandy or ſpirits, who ſhall receive into their cuſtody *Britiſh* ſpirits, ſhall keep the ſame in ſeparate cellars or other places, from their foreign brandy or ſpirits; on pain of 10s. for every gallon of *Britiſh* ſpirits found in the ſame place with the foreign ſpirits, together with the caſks in which the ſaid *Britiſh* ſpirits ſhall be found. 8 *G.* *c.* 18. *ſ.* 11.

32. It

32. It shall be lawful for the officers of excise, to take samples, not exceeding half a pint in the whole, out of each cask or other package containing foreign spirituous liquors, in any shop, warehouse, or other place, belonging to any dealer in the same; paying for such sample (if demanded) according to the market price liquor of the like quality shall be sold for at the time of such sample taken. 32 *G.* 2. *c.* 29. *s.* 2. Officers may take samples in the shop or warehouse.

33. No retailer shall make any increase of the liquors, after they have been taken account of by the officer, by any private addition thereto of water or other liquor; on pain of 40*s.* a gallon, and the liquors so mixed shall be seized and forfeited. 9 *G.* 2. *c.* 23. *s.* 8. Retailer increasing the liquors.

And if the officer of excise shall find any increase of *foreign* spirits, over and above the quantity which he found at any dealer's on the last survey, such increase shall be deemed to be made by foreign spirits for which no duty was paid; and so much as shall be found increased, shall together with the cask be forfeited, unless the owner make it appear, that the increase was made by mixing therewith in the presence of the officer of the division, some of his stock of *British* spirits whereof the officer had taken an account, or by foreign spirits brought with a permit, or that it had been condemned and brought in on due notice given to the officer. 8 *G.* *c.* 18. *s.* 12.

34. The officers at all times by day or night (but if in the night in presence of a constable, oath being first made before a justice dwelling near of a probable cause of suspecting a concealment) may enter into all such warehouses, shops, or other places, and by tasting, gaging, or otherwise, take an account of the quantity and quality; and if any such retailer shall hinder the officer, he shall forfeit 50 *l.* 9 *G.* 2. *c.* 23. *s.* 9. Retailer concealing.

35. And no such liquors shall be sold, but in such warehouse, shop, cellar, or other place, so entred; on pain of 40*s.* a gallon. 6 *G.* *c.* 21. *s.* 15. None to be sold but in entred places.

And by the 11 *G.* *c.* 30. No *arrack*, whether *British* or foreign, shall be offered to sale, either by wholesale or retail, but in an entered place; on pain of forfeiting the same, with the casks or other vessels, besides the said penalty of 40*s.* a gallon. *s.* 3.

36. Every person who shall have in his custody above 63 gallons, shall be deemed a seller and dealer in such liquors. 6 *G.* *c.* 21. *s.* 18. Who shall be deemed a seller and dealer.

37. No person shall retail any distilled spirituous liquors or strong waters, mixed or unmixed, without a Licence for retailing.

licence taken out ten days before, for which he shall pay 40 s. yearly; if within the bills, from two commissioners of excise; elsewhere, from the collectors and supervisors within their respective districts. 16 *G.* 2. *c.* 8. *s.* 8. 24 *G.* 2. *c.* 40. *s.* 9.

And every person who shall retail spirituous liquors mixed or unmixed, to be drank in any quantity whatsoever, in any place to him belonging; or shall retail or send the same abroad in less quantity than two gallons, shall be deemed a *retailer*. 17 *G.* 2. c. 17. s. 20.

Who only shall have licences.

38. And no such licence shall be granted, except to such persons only who keep taverns, victualling houses, inns, coffee-houses, or alehouses; and all other licences shall be void; and if any licensed person shall exercise the trade of a distiller, grocer, or chandler, or keep a brandy shop for sale of spirituous liquors, the licence shall be void. 17 *G.* 2. *c.* 17. *s.* 19.

And no licence shall be granted within the limits of the head office of excise in *London*, but to such as occupy tenements of 10 l. a year, and pay parish rates for the same; or in places where the occupiers of houses are not rated to the church and poor, then to such persons as pay rent of 12 l. a year, and not otherwise; nor to persons in any other part of the kingdom, but such as pay to the church and poor: And no licence shall be of any avail longer than he shall be so qualified. 24 *G.* 2. *c.* 40. *s.* 12. 26 *G.* 2. *c.* 13. *s.* 9.

To be first licenced to sell ale.

39. And such persons also shall first be licensed to sell ale or spirituous liquors, by two or more justices of the peace. 16 *G.* 2. *c.* 8. *s.* 11.

And the justices of the peace, and other officers, shall have the same jurisdiction over such retailers of spirituous liquors, as they have over alehousekeepers. 12 & 13 *W.* *c.* 11. *s.* 18. 2 *G.* 2. *c.* 28. *s.* 10.

To be licensed only where they dwell.

40. And no licence shall impower any person to sell spirituous liquors in any place, except in the house or places thereto belonging, wherein they shall inhabit at the time of granting the licence. 17 *G.* 2. *c.* 17. *s.* 22.

Penalty of selling without licence.

41. Persons retailing without licence shall forfeit 10 l. and on nonpayment when demanded, one justice on oath of such neglect shall commit the offender to the house of correction, to be kept to hard labour for two months, or till paid. 16 *G.* 2. *c.* 8. *s.* 9.

And the said penalty shall in no case be mitigated below the sum of 5 l. 24 *G.* 2. *c.* 40. *s.* 11. 26 *G.* 2. *c.* 13. *s.* 8.

And

And the juſtices may, if they think proper, inſtead of levying the penalty commit the offender to the houſe of correction, to be kept to hard labour for two months; and the perſon ſo committed ſhall before his diſcharge, be ſtript naked from the middle upwards, and whipt until his body be bloody. 17 *G.* 2. *c.* 17. *ſ.* 18.

And alſo all the diſtilled ſpirituous liquors that ſhall be then, or at any time within ſix months after conviction, found in his cuſtody, houſe, or other place occupied therewith, whether it be in his own occupation or not, ſhall by warrant of the ſaid commiſſioners, or of one juſtice, be ſeized, and ſtaved, or otherwiſe deſtroyed: And any peace or pariſh officer, authorized by ſuch warrant, may at any time in ſix months after conviction enter ſuch places and break open doors, if not opened on demand. And if any perſon ſhall offend again in like manner, the commiſſioners or juſtices before whom he ſhall be convicted of ſuch ſubſequent offence, may inflict the penalties by any former law to be inflicted for ſuch offence, and alſo commit the offender to the houſe of correction, to be kept to hard labour not exceeding three months, and alſo (if they ſhall think fit) order him to be whipt. And being convicted of a third offence, it ſhall be deemed felony, and the ſeſſions may tranſport him for any time not exceeding ſeven years. 24 *G.* 2. *c.* 40. *ſ.* 13.

And the conviction ſhall be in this form, or to the like effect, *viz.*

Middleſex. A. B. *is convicted on his own confeſſion* (or *on the oath of* A. W.) *of having ſold ſtrong waters in the pariſh of* ——— *in this county, on the* ——— *day of* ——— *without being duly licenſed thereto: This is the firſt, ſecond, or third conviction. Given under my hand and ſeal,* &c.

And the commiſſioners, or one juſtice, on oath of any offence againſt this act, or any other act for regulating the retailing of ſpirituous liquors, may grant a warrant to any of the peace officers, or other pariſh officers, to enter and ſearch the houſes and other places, where the offence ſhall be ſworn to have been committed, or in the occupation of the perſons ſworn to be guilty thereof, and they may break open the doors if not opened on demand, and ſeize all ſuch diſtilled ſpirituous liquors as they ſhall there find, and detain the ſame, till the offence ſhall be heard and determined; and if the offender be convicted, the liquors ſhall be forthwith ſtaved; and if he be not convicted, the ſame ſhall be reſtored. 24 *G.* 2. *c.* 40. *ſ.* 14.

Hawking in the ſtreets.

42. No perſon ſhall hawk, ſell, or expoſe to ſale any ſpirituous liquors about the ſtreets, highways, or fields, in any wheel-barrow or baſket, or on the water in any boat, or in any other manner; or ſhall ſell or expoſe the ſame to ſale, on any bulk, ſtall or ſhed, or any other place other than as above is allowed; on pain of 10*l.* And one juſtice on his own view, or confeſſion, or proof of one witneſs, may convict him; whereupon he ſhall immediately pay the 10*l.* to a churchwarden or overſeer: And on refuſal or neglect, the juſtice ſhall commit him to the houſe of correction to be kept to hard labour for two months to be reckoned from the day of commitment; and he ſhall not be diſcharged till he pay the ſum, or till the two months be expired. If there is no informer, it ſhall be wholly to the uſe of the poor; otherwiſe half to the informer, and half to the poor. 9 *G.* 2. *c.* 23. *ſ.* 13.

And moreover, he ſhall before his diſcharge from the houſe of correction, be ſtripped naked from the middle upwards, and whipt until his body be bloody. 10 *G.* 2. *c.* 17. *ſ.* 9.

And any one juſtice, on information on oath againſt ſuch perſon, may (without any previous ſummons) iſſue his warrant for apprehending and bringing him before ſome juſtice where the offence was committed. 11 *G.* 2. *c.* 26. *ſ.* 4.

And any perſon may ſeize and detain him, until he may give notice to the conſtable, churchwarden, overſeer, or other peace or pariſh officer; who ſhall carry the perſon ſo ſeized and detained, before a juſtice of the peace, who ſhall proceed thereon as in caſe where he is brought by the conſtable. 11 *G.* 2. *c.* 26. *ſ.* 5.

M. 13 *G.* 2. *K.* and *Crofts.* A woman was convicted for ſelling gin, and it appearing that ſhe was a feme covert, it was objected that ſhe could not be convicted, for as ſhe could make no contract, it muſt be taken to be her huſband's ſale; or if ſhe could be convicted, the huſband ought to have been joined for conformity. It was anſwered, that where the crime is of ſuch a nature, as can be committed by her alone, ſhe may be proſecuted without her huſband; which being a proceeding grounded merely on the breach of the law, he ſhall not be included, unleſs privy: In this caſe there may be impriſonment and whipping. And by the court, We think the conviction is right; for this is not like the caſes that ſound only in damages. The wife may be convicted for recuſancy. And though

though ſhe cannot have the benefit of the contract, yet ſhe as well as a ſervant may do the act of vending. Beſides, there would be a plain way to evade the act, if femes covert could not be convicted. *Str.* 1121.

43. If any leſs quantity than two gallons ſhall be ſold or delivered in any clandeſtine manner, to any perſon, in any houſe, outhouſe, ſtable, barn, ſhed, or other place, part of or belonging to any houſe or farm; in ſuch caſe, the occupier or occupiers (if more than one) conſenting thereto, ſhall be deemed retailers, and forfeit as ſelling without licence. 11 *G.* 2. *c.* 26. *ſ.* 1. Occupier of the houſe ſhall be liable.

44. Perſons giving away ſpirituous liquors, to ſervants or apprentices fetching goods from their ſhops, ſhall be deemed retailers. 9 *G.* 2. *c.* 23. *ſ.* 16. Perſons giving away ſpirituous liquors.

45. If any maſter or other perſon ſhall agree to pay any workman, ſervant, or labourer, or other perſon imployed by him or for him, ſo much money for wages, and ſo much ſpirituous liquors, as together with the money ſhall amount to the value of the wages uſually paid in like caſes; or ſhall ſet off or deduct any part of the wages, for any ſpirituous liquors; he ſhall be deemed a retailer, and forfeit 20 l. over and above the other penalties, and ſuch ſervant ſhall be intitled to his whole wages. 9 *G.* 2. *c.* 23. *ſ.* 11. Paying wages in ſpirituous liquors.

46. But nothing herein ſhall extend to phyſicians or apothecaries ſelling the ſame as medicines. 9 *G.* 2. *c.* 23. *ſ.* 21. 16 *G.* 2. *c.* 8. *ſ.* 12. Apothecaries ſelling ſpirituous liquors.

47. No licence ſhall be granted for retailing of any ſpirituous liquors, within any gaol, priſon, houſe of correction, workhouſe, or houſe of entertainment for pariſh poor; and if any keeper of ſuch priſon or houſe ſhall ſell, uſe, lend, or give away, or knowingly ſuffer any ſpirituous liquors or ſtrong waters to be ſold, uſed, lent, or given away in any ſuch gaols or houſes, or brought into the ſame, except ſuch as ſhall be preſcribed by the direction of a regular phyſician, ſurgeon, or apothecary, from the ſhop of ſome regular apothecary,—— he ſhall forfeit 100 l. half to the king, and half (with full coſts) to him who ſhall ſue in the courts at *Weſtminſter*. And if any ſuch perſon ſhall offend again in like manner, and be a ſecond time convicted; he ſhall forfeit his office 24 *G.* 2. *c.* 40. *ſ.* 17. Selling in gaols or workhouſes.

And any juſtice, on information on oath that ſpirituous liquors or ſtrong waters are kept and diſpoſed of in any ſuch priſon or other place, may enter and ſearch, or impower by warrant any conſtable to ſearch for and ſeize all

ſuch liquors as ſhall be found (except ſuch as are directed to be uſed medicinally) and to ſtave and deſtroy the ſame. *ſ.* 18.

And if any perſon ſhall bring, or indeavour to bring any ſuch liquors (except in the way of medicine as before mentioned) into any ſuch gaol or other place, the gaoler or his ſervants may apprehend and carry ſuch offender before any juſtice of the peace, who ſhall hear and determine ſuch offence in a ſummary way; and if by the oath of one witneſs, or otherwiſe, ſuch perſon ſhall be convicted, he ſhall be committed to priſon or to the houſe of correction, not exceeding three months, unleſs he ſhall immediately pay down ſuch fine not exceeding 20 l. and not leſs than 10 l. as the juſtice ſhall impoſe, to be paid half to the informer, and half to the poor of ſuch priſon or workhouſe. *ſ.* 19.

And the gaoler, keeper, maſter, or other officer, ſhall procure a copy of the three preceding clauſes, to be printed or fairly written, and hung up in one of the moſt publick places of his gaol, houſe of correction, or workhouſe aforeſaid, and renew the ſame from time to time, ſo that it be always kept fair and legible; on pain of 40 s. by warrant of one juſtice, on oath of one witneſs. And any juſtice may enter and demand a ſight of it, and if it ſhall not be ſhewn to him hung up in ſome publick place fair and legible; he ſhall immediately convict ſuch perſon, and ſo from time to time as often as he ſhall think fit: half to be to the informer, and half (or the whole if there be no informer) to the poor of ſuch gaol or other place. *ſ.* 20.

Recovering debt for ſpirituous liquors.

48. No perſon ſhall recover any debt on account of ſpirituous liquors, unleſs it ſhall *bona fide* have been contracted at one time to the amount of 20 s. or upwards; nor ſhall any particular article in any account be allowed, where the liquors delivered at one time, ſhall not amount to the full value of 20 s. and where no part of the liquors ſo ſold ſhall be agreed to be returned; and if any retailer, with or without a licence, ſhall take any pawn by way of ſecurity for payment of any money for ſuch liquors, he ſhall forfeit 40 s. by warrant of one juſtice, half to the poor, and half to the informer; and the owner ſhall have ſuch remedy for recovering ſuch pawn, as if it had never been pledged. 24 *G.* 2. *c.* 40. *ſ.* 16.

Diſtiller delivering to unlicenſed retailers.

49. If any diſtiller or other perſon ſhall knowingly ſell or deliver any diſtilled ſpirituous liquors, that the ſame may be unlawfully retailed, or to any unlicenſed retailer; he

he ſhall forfeit 10 l. and treble value of the liquors, half to the king, and half to him that ſhall ſue in the courts at *Weſtminſter*. And if any perſon guilty of retailing ſuch liquors, ſhall diſcover the diſtiller or perſon who knowingly ſupplied him therewith, and proſecute him to conviction, he ſhall be intitled to his ſhare of the penalty, and indemnified againſt all penalties incurred by him before that time, for ſelling ſpirituous liquors without licence. 24 *G.* 2. *c.* 40. *ſ.* 15.

Riotouſly reſcuing offenders, or aſſaulting informers.

50. If any perſons to the number of five or more, ſhall in a tumultuous and riotous manner aſſemble to reſcue any offenders againſt any act relating to ſpirituous liquors, or for licenſing the retailers thereof, or to aſſault any perſon who ſhall have given or is about to give any information againſt, or ſhall have diſcovered or given evidence againſt, or ſhall ſeize or bring to juſtice any offender; he his aiders and abettors, ſhall be guilty of felony, and tranſported for ſeven years. 24 *G.* 2. *c.* 40. *ſ.* 32.

Permit for removal after ſale.

51. Where any ſuch liquors ſhall be ſold in any ſuch entred place, the officer ſhall on requeſt of the ſeller (without fee) give the buyer a certificate ſigned by him, expreſſing the quantity, the name of the buyer and ſeller, and that the duty hath been paid, or that it hath been condemned as forfeited. 6 *G.* *c.* 21. *ſ.* 16.

And no ſuch liquor, exceeding one gallon, ſhall be carried without ſuch certificate or permit; on pain of forfeiting the ſame with the caſks and veſſels. *ſ.* 17.

And if any perſon ſhall take out a permit, and not remove the liquors accordingly, nor return the permit; he ſhall forfeit treble value: And if there appears not a ſufficient decreaſe in the ſtock, to anſwer the quantity in the permit, the officer may ſeize ſo much as will anſwer the quantity. But no perſon ſhall receive a permit, without direction in writing of the perſon (or his ſervant) from whoſe ſtock the goods are to be removed; on pain of 50 l. and in default of payment, three months impriſonment. 11 *G.* *c.* 30. *ſ.* 10.

Selling without a permit, or pedlars with one.

52. If any perſon ſhall offer any ſpirituous liquors to ſale, not having a permit; or if any pedlar or other trading perſon, going from town to town, or other mens houſes, and trading either on foot, or with any horſe or other cattle, or otherwiſe, ſhall offer any ſuch liquors to ſale, altho' he have a permit: the perſon to whom they are offered to ſale, may ſeize and detain ſuch liquors, and carry them to the next warehouſe belonging to the cuſtoms or exciſe, and bring the perſon before a juſtice, to be by him

him committed to prison, and prosecuted for the penalties incurred for such offence; and such liquors may be prosecuted in the name of the person who stopped or seized the same, in like manner as if they had been seized by an officer. 9 *G.* 2. *c.* 35. *s.* 20.

Officer neglecting to seize.

53. When any officer of the customs shall neglect to seize and prosecute any vessel, boat, horses, or other cattle or carriage, forfeited for running of brandy, and shall be convicted thereof on his appearance or default, by oath of one witness, or confession; he shall forfeit 50 l. 6 *G.* 2. *c.* 17. *s.* 10.

Constable neglecting his duty.

54. If any constable or other peace officer, shall refuse or neglect on notice, or his own view, to be aiding in the execution of this, or of the acts of 9 *G.* 2. or 10 *G.* 2. herein mentioned; he shall, on conviction by the oath of one witness, forfeit 20 l. 11 *G.* 2. *c.* 26. *s.* 7.

Carrying coastwise.

55. All low wines or spirits carried coastwise, without a certificate from the officer of excise where they were made, that the duty hath been paid, shall be forfeited, and seized by the officers where they shall be brought in. 3 *G.* *c.* 4. *s.* 17.

Shipped as stores.

56. By the former acts, it was generally provided, that home spirits might be exported, and a drawback of the duties was to be allowed thereupon.

But by the 6 *G.* 2. *c.* 17. for spirits drawn from *British* corn, there was to be allowed a drawback by the excise officers at the port of shipping, of 41. 18 s. a ton, in full of all drawbacks: Except that from every ton of spirits drawn from barley malt, or other corn, there shall be paid by the officers of the customs, when barley is 24 s. a quarter, or under 1 l. 10 s. in like manner as for corn exported. *s.* 7, 8.

And by the 33 *G.* 2. *c.* 9. there was to be an additional drawback of 24 l. 10 s. a ton, on all *British* made spirits exported; oath being made before two commissioners of excise or justices of the peace, that the duties were paid, and that the same were to be exported for *merchandize* to be spent beyond the seas. *s.* 15.

And by the said act of the 33 *G.* 2. *c.* 9. it is further enacted, that the same drawbacks and allowances shall be made on spirits shipped as *stores*, to be spent on shipboard, on giving five days notice thereof to the commissioners of excise or to whom they shall appoint, mentioning therein the destination of the voyage, the tonage of the ship, and the number of mariners intended to be employed; which said commissioners, or person appointed by them, shall ascer-

tain the quantity of such spirits which shall be shipped on board such vessel as stores, and the size and marks of the casks in which such spirits shall be shipped. And on oath being made before one commissioner or justice of the peace, or other person authorized by the commissioners, that the duties are paid, and that the same are to be shipped as stores to be spent in the voyage; and on certificate from the officer of excise where such spirits were shipped of the quantity so shipped, and that the same were proof spirits, and shipped in the presence of such officer, the duties shall be allowed or paid back. *s.* 15.

Provided, that no drawback shall be allowed for spirits shipped as *stores*, in any vessel of less than 100 tons burden. *s.* 16.

And if any such spirits shipped for *stores*, shall be relanded in *Great Britain*, *Guernsey*, *Jersey*, *Alderney*, *Sark*, or *Man*, unless in case of distress to save the goods from perishing (of which notice shall immediately be given to the proper officer); then, not only all such spirits and the casks or other package shall be forfeited, but also the person who shall bring, or procure such spirits to be relanded or shall be assisting or otherwise concerned in unshipping the same, or to whose hands the same shall knowingly come after the unshipping, or by whose privity or direction the same shall be relanded, shall forfeit double the amount of the drawback, and also the casks and other package, together with the vessels and boats, and all the horses or other cattle and carriages whatsoever, made use of in landing, removing, or carrying the same; which may be seized by any officer of the customs or excise. Master assisting therein, or conniving thereat, shall (over and above all other penalties) be imprisoned for six months. And if the package shall be altered at any time after the shipping thereof, and before the arrival of the ship at the place of discharge; the master, or other person taking charge of the vessel, shall forfeit 100 l. *s.* 18.

And whereas spirits shipped for stores are frequently concealed from the officers, on pretence of being put underneath other goods; all spirits shipped for stores shall during the time the vessel shall be in port, be openly stowed and kept, so that the officers may at any time examine the same; on pain of forfeiting double the duty of all such stores which shall not be so stowed and kept, or produced and shewn to the officers of excise, according to the rate such spirits would have been charged with if made for home consumption. 2 *G.* 3. *c.* 5. *s.* 21.

57. No

Exportation duty free.

57. No wash which shall be brewed or made for the making of low wines in order to extract spirits for *exportation*, nor any such low wines or spirits, shall be chargeable with any duties of excise; and all drawbacks thereupon, whether payable by the commissioners of excise or customs shall cease. 2 *G.* 3. *c.* 5. *s.* 5, 6.

Entry of houses and vessels for making spirits for exportation.

58. Every distiller intending to make or distill spirits for exportation, shall, four days at the least before he shall begin to brew any corn or grain, or to mix any other materials for the making of wash, to be distilled into low wines, in order to extract spirits for exportation, —make a particular entry at the next office of excise, of every still, copper, ton, washbatch, cask, or other vessel, which he shall make use of for the brewing, distilling, working, making, laying, or keeping any worts, wash, low wines, or spirits; and also of the casks or vessels which he shall make use of for the brewing, holding, or keeping of the after-runnings or feints from the second extraction which shall from time to time be drawn from every such still; and also of every workhouse, stillhouse, storehouse, warehouse, or other place, by him used for the preparing, distilling, or keeping wash, low wines, or spirits; and in such entry shall insert the day when he intends to begin first to brew any corn or grain, or to mix any other materials for the making of wash, to be distilled into low wines, in order to extract spirits for exportation; and shall afterwards, from time to time, during the continuance of such entry, give or leave notice in writing at the said officer of excise, or with the officer for the division, four hours at least before he shall begin any such subsequent brewing or mixing, and shall insert in such notice the hour when he intends to begin; and shall also, from time to time, during the continuance of such entry, give or leave notice in writing at the said office of excise or with the said officer, four hours at least before any wash is pumped up or otherwise conveyed into the still, and shall insert in such notice the hour when he intends to begin; on pain of 100 l. for every offence. And if after such entry so made, he shall not begin and proceed to brew or mix his materials as aforesaid, on the day mentioned in such entry or within four hours afterwards; or having given such notice, shall not begin and proceed in such operations at the hour and time mentioned in such notice, or in two hours afterwards; such notice shall be void: and if he shall proceed without fresh entry

entry or notice reſpectively, he ſhall forfeit the like ſum of 100 l. 2 *G.* 3. *c.* 5. *ſ.* 7.

Provided, that nothing herein ſhall extend to permit or authorize any diſtiller to make entry of his intention to make ſpirits for exportation, whoſe waſh ſtill will not contain 1600 gallons, and the ſpirit or low wine ſtill 800 gallons. *ſ.* 8.

Neither ſhall any diſtiller be permitted to diſtill ſpirits for exportation, altho' he may have made entry as aforeſaid, unleſs he ſhall actually have diſtilled into ſpirits all the waſh and low wines in his cuſtody for making of ſpirits for home conſumption, at leaſt 48 hours before the day mentioned in ſuch entry. *id.*

Provided, that when any diſtiller ſhall be deſirous of diſtilling any ſpirits for home conſumption, and ſhall have actually diſtilled into ſpirits all the waſh, low wines, and feints in his poſſeſſion for the making of ſpirits for exportation, and ſuch ſpirits ſhall be locked up in the warehouſe as herein after is directed; he may withdraw his entry for exportation, and be at liberty to make a freſh and like entry for making ſpirits for home conſumption; and after ſix days from ſuch entry made, he may begin to brew or mix materials for waſh to be diſtilled into ſpirits for home conſumption: And if he ſhall begin contrary hereunto, he ſhall forfeit 200 l. *ſ.* 9.

Manner of making and warehouſing for exportation.

59. And no waſh that ſhall be brewed or mixed for the extracting of ſpirits for exportation, ſhall be pumped up into the ſtill, or otherwiſe removed from the back or veſſel wherein the ſame was fermented, but in the preſence of an officer; and ſuch diſtiller ſhall run or draw off his low wines immediately from the ſtill into entred veſſels only, and continue them therein, ſo that the officers may take a true gage of ſuch low wines; and ſuch diſtiller ſhall provide a proper caſk which ſhall be duly entred and gaged, into which the ſpirits ſhall immediately run from the ſtill, which caſk ſhall be ſufficient to contain the whole produce of ſpirits to be extracted from each ſtill when made up to the proper ſtrength ſuch ſpirits are required to be; and when the whole quantity of ſpirits ſhall be collected in ſuch caſk from each ſtill, ſuch diſtiller ſhall immediately make up ſuch ſpirits in the preſence of the officer, to the ſtrength of one to ſix under hydrometer proof: And a true gage of ſuch ſpirits ſo made up ſhall then be taken by the officer. And the ſaid ſpirits ſhall immediately afterwards be put into caſks, and ſecured in the

the preſence of the officer in a warehouſe to be provided and kept by the diſtiller, and duly entred at the proper office of exciſe; which ſpirits ſhall be kept there ſeparate from all ſpirits made for home conſumption; and no ſpirits for home conſumption ſhall be put into the ſame warehouſe; and ſuch warehouſe ſhall be ſecured under three locks, one to be provided by the diſtiller, and the other two by the officer of exciſe at the expence of the diſtiller; whereof one key to be kept by the diſtiller, another by the ſuperviſor, and the third by the officer of exciſe, until the ſpirits ſhall be delivered out for rectification, or afterwards for exportation; which warehouſe ſhall be ſecured to the ſatisfaction of the ſuperviſor ſignified under his hand: And if any diſtiller for exportation ſhall act contrary to theſe directions; or ſhall obſtruct the officer in gaging, or in taking ſamples, or in trying the proof of the ſpirits (which gages, ſamples, and trials of proof the officers ſhall make as often as the commiſſioners ſhall direct, the ſamples to be returned when the commiſſioners ſhall find it expedient to give directions for that purpoſe); or ſhall open any of the locks in the abſence of the officer, or make any way into ſuch warehouſe, or remove any part of the partition of it, or make any addition to, or any way alter the ſame, without notice to the ſuperviſor and his conſent in writing firſt had; or ſhall remove any of the ſaid ſpirits from the warehouſe, before the ſame ſhall be taken out for immediate rectification or exportation; or ſhall remove or conceal any waſh or low wines for making ſpirits for exportation, or any ſuch ſpirits, whether raw, or rectified, either before the ſame are put into the warehouſe or afterwards; he ſhall forfeit 500*l.* 2 *G.* 3. *c.* 5. *ſ.* 10.

But this ſhall not hinder any maker of ſpirits for exportation, from ſending ſuch ſpirits out of his locked warehouſe to any other diſtiller: provided ſuch maker and diſtiller give bond in double value of the ſpirits, and double duty which they would have been liable to if made for home conſumption, for the due exportation thereof within three months; and provided leave in writing be obtained from the commiſſioners; and four hours notice thereof at leaſt be given to the officer, that he may receive the ſame into ſuch diſtiller's ſtock; and provided ſuch ſpirits be removed with a proper certificate from an exciſe officer: And ſuch diſtiller ſhall thereafter be liable to the ſame penalties for breach of directions, as the maker would have been. *ſ.* 11.

And

And to prevent distillers from working in the absence of the officers; every such distiller shall permit the officer to secure the heads of the stills, when the stills are not at work; and also the pumps for charging the stills and emptying the low wine and spirit cask, so as to prevent the same from being used in the absence of the officer; and also to secure the lid or head of the low wine and spirit casks, and the safe at the end of the worm, to prevent any spirits or low wines from being secreted, whilst the still is at work. *s.* 18.

Taking out of the warehouse for rectifying, or exportation.

60. No raw unrectified spirits shall be permitted to be exported. And when any distiller for exportation shall be desirous to take any of his spirits out of the warehhuse in order to be rectified, or when rectified, and again deposited in the warehouse, in order to be immediately shipped for exportation, he shall thereof give four hours notice in writing to the supervisor or officer of excise, and shall insert in such notice the day and hour when he intends so to do, and also the quantity and quality of spirits he desires to take out, and whether such spirits are raw or rectified, and out of what warehouse, and whether the same are for rectification and by whom, or for immediate exportation, or to be sent coastways, and to whom and to what port, and whether for merchandize or stores: And the supervisor or officer shall attend and see the quantity taken out, and take an account of the same. And if such distiller shall not begin and proceed to take the spirits out of the warehouse at the time mentioned in the notice, or within two hours after, such notice shall be void; and he shall give a fresh notice four hours at least before he shall begin to take the said spirits out of the warehouse. And if he shall make default in any of the said particulars, he shall forfeit 100 l. 2 *G.* 3. *c.* 5. *s.* 11.

And when any raw spirits shall be so taken out in pursuance of such notice, the same shall be immediately pumped up, or put in the presence of the officer into the still or stills, and be rectified forthwith, and the spirits shall be run off immediately from the still into a like cask as is before directed to be provided and entred for the containing of spirits immediately distilled from low wines; and when the whole quantity of spirits designed to be made into brandy shall be collected in such cask from each still, the same shall be immediately made up in the presence of the officer to the strength of one to six under hydrometer

hydrometer proof, at which ſtrength all ſpirits are to be exported; and a gage of ſuch ſpirits ſo made up ſhall then be taken by the officer, who ſhall keep an account thereof; and ſuch ſpirits ſhall immediately afterwards be put into caſks, and in the preſence of the officer either carried directly on ſhipboard for exportation (if intended to be immediately exported), or elſe into ſuch warehouſe to be locked up in manner aforeſaid. 2 *G.* 3. *c.* 5. *ſ.* 13.

And if it ſhall happen, that the ſpirits diſtilled for exportation in one day belonging to any diſtiller, cannot for want of time be conveyed from the ſpirit caſk (into which they are directed to be run immediately from the ſtill) and locked up in the warehouſe; the officer ſhall gage the ſame, and ſecure the lid of the ſaid ſpirit caſk, and take ſamples thereof: which ſpirits ſhall be locked up in the warehouſe the next morning (if not intended for immediate exportation). And if it ſhall appear, that any decreaſe has been made in the quantity or quality of the ſaid ſpirits ſo gaged; or if any ſuch ſpirits ſhall have been removed in the abſence of the officer; the diſtiller ſhall be charged for the ſaid ſpirits ſo decreaſed or removed, double the duties which they would have been charged with if made for home conſumption. *ſ.* 14.

Taking out for home conſumption.

61. Provided, that if any ſuch diſtiller, after he ſhall have depoſited in ſuch warehouſe any ſpirits, whether raw or rectified, made (from corn, malt, or melaſſes, and not otherwiſe, 6 *G.* 3. *c.* 46. *ſ.* 1.) for exportation, ſhall be deſirous of uſing any ſuch ſpirits for home conſumption, and ſhall ſignify ſuch his deſire to the commiſſioners; they, or two of them, may direct the quantity ſo deſired, to be taken out and delivered to the diſtiller; he having firſt paid to the officer appointed to receive the duties on low wines and ſpirits, the ſum of 40 l. 10 s. for each ton of ſuch ſpirits of the ſtrength they were taken into ſuch warehouſe, to wit, one to ſix under hydrometer proof. 2 *G.* 3. *c.* 5. *ſ.* 15.

And for the purpoſes of this act, each gallon of brandy, or ſpirits of the ſtrength of one to ſix under hydrometer proof, ſhall be reckoned at 7 lb. 3 oz. the gallon. *ſ.* 16.

Provided always, that no leſs quantity than a ton of ſuch ſpirits ſhall be taken out of any ſuch warehouſe, at one time for home conſumption. 6 *G.* 3. *c.* 46. *ſ.* 2.

To be returned to the warehouſe after rectifying.

62. When any quantity of raw ſpirits ſhall, in purſuance of any notice, be delivered out of the warehouſe, in order to rectify the ſame; as many gallons of rectified ſpirits,

ſpirits, and of the ſame ſtrength when made up, ſhall be produced, as ſuch quantity amounted to when taken out of the warehouſe, allowing only for the feints. And the commiſſioners ſhall make juſt allowances for neceſſary waſte, and the difference that will ariſe between gaging and weighing ſpirits. Which feints ſhall alſo be run off from the ſtill directly into one large feint caſk, and ſhall be immediately gaged as ſoon as the ſtill is off, and an account thereof taken by the officer, and kept in ſtock by him; who may take ſamples of ſuch feints. Which feints ſhall be in like manner locked up in the warehouſe, and ſhall be there put into one or more large caſks to be provided by the diſtiller, and marked with the word *Feints*. And every ſuch diſtiller ſhall, once a month at leaſt, diſtill all his feints, and make up the ſpirits to be produced therefrom of the ſtrength of one to ſix under hydrometer proof. And all ſuch ſpirits ſhall then be locked up, or exported as other ſpirits for exportation are hereby directed to be. 2 *G.* 3. *c.* 5. *ſ.* 17.

Penalty for ſpirits miſſing.

63. If any decreaſe ſhall be found in the *waſh* brewed or made for the diſtilling of ſpirits for exportation (except ſuch decreaſe as ſhall be made appear to the commiſſioners to have really and truly riſen from accidents); the officer ſhall charge double duty for the ſame, calculating ſuch waſh ſo found to be decreaſed, to produce the ſame quantity of low wines and ſpirits as waſh is preſumed to do when ſpirits are made for home conſumption: And if any decreaſe ſhall appear in the ſtock of *ſpirits* made for exportation, except ſuch as may be accounted for by certificate of the officer either as being exported for merchandize or for ſtores, or as being taken out for home conſumption on payment of duties by conſent of the commiſſioners, or by any allowance the commiſſioners ſhall have made for waſte or for any difference which may have ariſen between gage and weight, or by being ſent coaſtwiſe for exportation, or by being ſent with the conſent of the commiſſioners to any other diſtiller in order to be rectified for exportation; the officer ſhall charge for all the ſpirits ſo decreaſed, double the duty ſuch ſpirits would have been charged with if made for home conſumption. 2 *G.* 3. *c.* 5. *ſ.* 18.

Delivered out for carrying coaſtwiſe for exportation.

64. When ſpirits made for exportation ſhall be delivered out of the warehouſe, to be ſent *coaſtwiſe* (with a certificate from the proper officer) in order for exportation; the diſtiller ſhall, on taking out the ſame, give bond in double the value of the ſpirits, and double the duties which

are payable for the like ſpirits diſtilled for home conſumption, that the ſame ſhall (the danger of the ſeas and enemies excepted) be really and truly landed in ſuch port of this kingdom for which the ſame ſhall be entred. And ſuch bonds ſhall not be diſcharged or delivered up, till a certificate ſhall be produced from the chief officer of exciſe of the port for which ſuch ſpirits were entred, teſtifying the landing thereof, and deſcribing the number of the caſks or other package, and the marks, and the quantity of ſpirits landed; and alſo teſtifying, that the maſter, mate, purſer, or other perſon having charge of the veſſel, had made oath before him, that the ſaid ſpirits were fairly landed there, and that at the time of landing they were of the ſame quality as when ſhipped on board, and that no part of ſuch ſpirits had been wilfully or fraudulently diminiſhed, relanded, or unſhipped ſince the ſame were put on board; and alſo, teſtifying, that the ſame were really, and truly, ſince their arrival there, exported from thence to foreign parts: and the condition of all ſuch coaſt bonds ſhall be, to produce ſuch certificate in ſix months from the date thereof. And ſuch ſpirits ſo to be ſent coaſtwiſe, when landed at the port for which they were entred, ſhall be immediately put into a proper warehouſe, and there continued until the ſame ſhall be exported, and ſhall be ſecured by the perſon to whom they are ſent, and by the ſaid chief officer, by two locks and keys to be provided by the perſon to whom the ſpirits were ſent, one key to be kept by the ſaid perſon, and the other by the officer. And all maſters, commanders, and other perſons belonging to any veſſel carrying goods coaſtwiſe, who ſhall aſſiſt or connive at the fraudulent landing, embezilling, or diminiſhing any ſpirits ſent coaſtwiſe, and all other perſons concerned in unſhipping the ſame, or to whoſe hands the ſame ſhall knowingly come, ſhall be ſubject to all penalties and forfeitures inflicted by any former act for inforcing the fair exportation of ſpirits to foreign parts. 2 *G.* 3. *c.* 5. *ſ.* 19.

Bond to be given on exportation.

65. When any ſpirits made for exportation ſhall be entred for *Ireland*, or his majeſty's plantations in *America*, or any other parts beyond the ſeas in *Europe*, or any parts in *Africa* or *Aſia*; the exporter thereof, when the whole quantity of ſpirits intended at that time to be exported ſhall be ſhipped, ſhall immediately give bond in double value of the ſpirits entred for exportation, and double the duties ſuch ſpirits ought to have paid if they had been made for home conſumption, that the ſame ſhall (the

(the danger of the ſeas and enemies excepted) be landed at the place of deſtination, and until ſuch bond ſhall be entred into by the exporter, the diſtiller from whoſe warehouſe ſuch ſpirits were ſent ſhall be charged for ſuch quantity of ſpirits ſo ſhipped for exportation, with double the duty ſuch ſpirits would have been charged with if made for home conſumption, and ſuch charge ſhall not be diſcharged till ſuch bond ſhall be given; and ſuch bond ſhall not be diſcharged, till a certificate be produced from the proper officer abroad, of the due landing thereof, and of oath being made before him by the maſter or other perſon having charge of the veſſel that the ſame had not been fraudulently diminiſhed, relanded, or unſhipped; and until oath ſhall alſo be made by the exporter at home, that to the beſt of his knowledge or belief, the ſame were diſpoſed of at the place referred to in the certificate: and the condition of the bond ſhall be, to produce ſuch certificate from *Ireland* in 6 months, from *America* in 18 months, from other parts of *Europe* in 15 months, from *Africa* in 18 months, and from *Aſia* in 3 years, (danger of the ſeas and enemies excepted). 2 *G.* 3. *c.* 5. *ſ.* 21, 22.

Bounty on exportation.

66. For the encouragement of the exportation of ſpirits made from *corn*; there ſhall be a bounty of 3 l. 12 s. for every ton of ſpirits made from corn, which ſhall be exported as merchandize. And on oath made before two commiſſioners of exciſe, or juſtices of the peace for the place from whence ſuch ſpirits are intended to be exported, that the ſame were drawn and made in *Great Britain* from corn under the regulations of this act, and not mixed with any other materials except what were neceſſary for rectifying the ſame, and that ſince the making thereof the ſame have been properly ſecured in a warehouſe according to the directions of this act, and that the ſame are to be exported for merchandize to be ſpent beyond the ſeas; and on producing a certificate under the hand of the officer of exciſe for the port or place where ſuch ſpirits were ſhipped, of the quantites ſo ſhipped, and that the ſame were ſhipped in the preſence of ſuch officer; the diſtiller ſhall be paid by the commiſſioners of exciſe, or their collector for the port or place where ſuch ſpirits ſhall be ſhipped, the ſaid bounty of 3 l. 12 s. a ton, and ſo in proportion for a greater or leſs quantity. 2 *G.* 3. *c.* 5. *ſ.* 20.

Provided, that no drawback ſhall be allowed, for any *Britiſh* made ſpirits, exported as merchandize, in any caſk containing leſs than 100 gallons, or in any veſſel of

leſs burden than 100 tons. 33 *G.* 2. *c.* 9. *ſ.* 16.——Except to *Africa* and *Newfoundland*: unto which places they may be exported as merchandize, in any veſſel not being of leſs burden than 70 tons. 6 *G.* 3. *c.* 46. *ſ.* 9.

Exportation of rum.

67. On the exportation of rum or ſpirits of the produce of the *Britiſh* plantations in *America*, as merchandize, in lieu of all former drawbacks, all the duties of cuſtom ſhall be drawn back: and rum exported from the rum warehouſe, before payment of the exciſe duties, ſhall be diſcharged of the ſaid duties of exciſe. 33 *G.* 2. *c.* 28. *ſ.* 1, 2.

And on oath made before two commiſſioners or juſtices, that the rum is to be exported for marchandize to be ſpent beyond the ſeas; and on producing a certificate from the exciſe officer of the quantity ſhipped, and that a certificate was produced from the proper officer of delivery from the warehouſe on bond being given for the due exportation thereof, and alſo upon delivery of ſuch laſt mentioned certificate, the perſon having cuſtody of the bond for payment of the duties ſhall deliver it up; or if only a part of the rum contained in the bond ſhall be certified to be ſhipped off, then ſuch quantity ſhall be indorſed upon the bond. 33 *G.* 2. *c.* 28. *ſ.* 1, 2. 8 *G.* 3. *c.* 25. *ſ.* 7.

Provided, that the ſaid drawback ſhall not be allowed for any rum exported in any caſk containing leſs than 100 gallons, or ſhipped on board any veſſel of leſs burden than 100 tons (except to *Africa*, *Ireland*, and *Newfoundland*; unto which places they may be exported as merchandize, in any veſſel not being of leſs burden than 70 tons, 6 *G.* 3. *c.* 46. *ſ.* 9.); or exported from any port not being the port of its importation. 33 *G.* 2. *c.* 28. *ſ.* 6.

And if after delivery from the ſaid warehouſe any rum ſhall be concealed; or not ſhipped within 12 hours; or the caſks or package be opened, or any part taken out, or the quality be altered; all ſuch rum ſhall be forfeited with the caſks and package, and may be ſeized by any officer of exciſe; and the bond for exportation ſhall be put in ſuit, unleſs the commiſſioners ſee cauſe to forbear the ſame. *ſ.* 8.

Power of the juſtices.

68. All the penalties not herein otherwiſe directed, ſhall be ſued for and mitigated as by the laws of the exciſe, or in the courts at *Weſtminſter*; and be half to the king, and half to the informer or proſecutor. 24 *G.* 2. *c.* 40. *ſ.* 33.

Reward where no penalty is levied.

69. And where the retailer is ſent to the houſe of correction, the commiſſioners ſhall cauſe rewards, not exceeding 5 *l.* to be paid to the informers. 17 *G.* 2. *c.* 17. *ſ.* 21.

Limitation of actions.

70. No informations ſhall be brought againſt a diſtiller, for any falſe or miſentry, or offence, but within three

months after the offence committed; and notice thereof ſhall be given to the party in writing, or left at his dwelling houſe, within a week after laying the information. 12 & 13 *W.* *c.* 11. *ſ.* 17.

71. And the commiſſioners ſhall cauſe all foreign exciſeable liquors, ſeized for non-payment of duty, or for being prohibited to be imported, to be publickly ſold, after condemnation, to the beſt bidder, at ſuch places as they ſhall think proper. 12 *G.* *c.* 28. *ſ.* 1. Sale after condemnation.

72. And all ſtills, worms, and ſtill heads, and other veſſels and utenſils for diſtilling, by whomſoever they ſhall be claimed, ſhall be liable to arrears. 7 & 8 *W.* *c.* 30. *ſ.* 13. Utenſils liable.

73. The juſtices within the limits of the head office of exciſe in *London*, ſhall once in every month tranſmit to the clerk of the peace, a certificate of all perſons convicted before them for any offences againſt this or any former act relating to ſpirituous liquors, or for licenſing the retailers thereof; who ſhall keep and enter the ſame among the records of the court: which certificate ſhall be evidence upon any information relating to ſpirituous liquors. 24 *G.* 2. *c.* 40. *ſ.* 21. Conviction to be kept amongſt the records of the ſeſſions.

XV. Starch and hair powder.

1. By the 10 *An.* *c.* 26. and 12 *An.* *ſt.* 2. *c.* 9. For all ſtarch imported ſhall be paid 4 d. a pound, over and above all other duties. Duty on ſtarch imported.

And all hair powder made of ſtarch, or other powder that will ſerve for the ſame uſes as ſtarch, ſhall on importation pay the ſame duties, as foreign ſtarch imported. 3 *G.* *c.* 4. *ſ.* 14.

2. And by the ſaid acts, for all ſtarch made in the kingdom, a duty ſhall be paid of 3 d. a pound. Duty on home ſtarch.

3. For the management of which duties on home ſtarch the commiſſioners of the treaſury ſhall appoint commiſſioners, who ſhall ſubſtitute inferior officers. 10 *An.* *c.* 26. *ſ.* 9. Officers for theſe duties.

4. And no maker of ſtarch ſhall ſet up or uſe any work-houſe, ſtorehouſe, room, or other place, for making, drying, or keeping of ſtarch, or for the converting or keeping any flour, meal, or other materials proper to be made into ſtarch, or uſe any fat, trough, box, ſtove, utenſil or other veſſel for making of ſtarch; without notice thereof being firſt given in writing at the next office for the ſaid duties; on pain of 50 l. 10 *An.* *c.* 26. *ſ.* 10. Places of making to be entred.

And a ſummons left at the place where diſcovery ſhall be made of ſuch offence, directed to the perſon proſecuted, by his right or aſſumed name, ſhall be as effectual as if delivered perſonally, and directed to him by his proper name. 5 *G.* 3. *c.* 43. *ſ.* 19.

And all flour, meal, and other materials, found in any private workhouſe, or other place, and all private utenſils, and veſſels for making or keeping ſtarch, for which no entry ſhall be made, or notice given, ſhall be forfeited, or the value thereof. 10 *An.* *c.* 26. *ſ.* 22.

Officers to enter and ſurvey.

5. And the officer ſhall at all times by day or night, and if in the night in preſence of a conſtable, be permitted on requeſt to enter the houſe, workhouſe, warehouſe, or other place uſed by any maker of ſtarch; and by gaging or weighing the ſtarch, and gaging the boxes and other utenſils, or otherwiſe, to take an account of the quantity; and thereof ſhall make return in writing to the commiſſioners, leaving a true copy, if demanded, under his hand, with the maker; and if he ſhall not leave ſuch copy (after demand in writing, 12 *G.* *c.* 28. *ſ.* 30.) he ſhall forfeit 40 s. 10 *An.* *c.* 26. *ſ.* 14.

Obſtructing the officer.

6. And if the maker ſhall obſtruct ſuch officer in the execution of his duty, he ſhall forfeit 20 l. 10 *An.* *c.* 26. *ſ.* 18.

How to be boxed in making.

7. The maker ſhall uſe regular, ſquare, or oblong boxes only, for boxing and draining his green ſtarch, before it is dried in the ſtove; on pain of 10 l. 4 *G.* 2. *c.* 14. *ſ.* 1.

Notice of boxing.

8. And he ſhall, if within the bills, give 12 hours, elſewhere 24 hours notice in writing to the officer, of his intention to put any green ſtarch into ſuch boxes: on pain of 20 l. And he ſhall, within two hours after ſuch notice ſhall have been given, begin to box it, and ſo continue, that the officer may have a gage of the whole; on pain of 20 l. 4 *G.* 2. *c.* 14. *ſ.* 1.

Gaging in the boxes.

9. And if the charge be made by gaging it before it be dried in the ſtove; then every box of green ſtarch, or ſtarch before it be dried, containing 57 inches in length, and 10 inches in breadth, and eight inches in depth, or in the whole 4560 ſolid inches, ſhall be eſteemed 131 pounds averdupois, of ſtarch dried and perfectly made. 1 *G.* *ſt.* 1. *c.* 2. *ſ.* 6.

Scales and weights.

10. And the maker ſhall keep ſcales and weights at the place where he makes his ſtarch, and permit and aſſiſt the officer to make uſe thereof; on pain of 10 l. 10 *An.* *c.* 26. *ſ.* 16.

11. No

11. No maker of ſtarch ſhall (on pain of 20 l.) remove any ſtarch of which no account hath been taken by the officer, from the place where it was made; without giving to the officer within the bills 24 hours notice, and elſewhere two days notice. 10 *An. c.* 26. *ſ.* 19. Removing before ſurveyed.

And by 4 *G.* 2. *c.* 14. If he ſhall remove any ſtarch after it is dried, out of the ſtove or drying place, before it has been weighed and taken account of by the officer; he ſhall forfeit 50 l. *ſ.* 2.

12. If any officer of the duties upon ſtarch or of the cuſtoms, ſhall have any cauſe to ſuſpect that ſtarch is privately making in any place, or concealed; then upon oath made before any commiſſioner or juſtice reſiding near, ſetting forth the ground of his ſuſpicion, ſuch commiſſioner or juſtice may iſſue his warrant, to authorize ſuch officer by day or night (but if in the night, in preſence of a conſtable) to enter ſuch ſuſpected place, and ſeize and carry away the ſame, with the materials, as forfeited, together with the boxes and other things containing it: and unleſs the party make it appear that the duty has been paid, he ſhall forfeit 50 l. and if any perſon obſtruct the officer, he ſhall forfeit 100 l. 4 *G.* 2. *c.* 14. *ſ.* 4. 23 *G.* 2. *c.* 21. *ſ.* 34. Concealing.

13. The officer ſhall be permitted to take an account of the quantites of flour, meal, and other materials proper to be made into ſtarch, that ſhall be in the poſſeſſion of the maker; and if he ſhall miſs any ſuch materials, which he had taken an account of the laſt time he was there, and ſhall not on reaſonable demand, receive ſatisfaction what is become thereof, he may charge the maker with ſuch quantity of ſtarch, as ſuch materials ſo miſſing in his judgment would reaſonably have made, not exceeding 25 pounds weight of ſtarch, for every buſhel of ſuch ingredients mixed or unmixed. 10 *An. c.* 26. *ſ.* 17. Officer to charge for materials miſſing.

14. The maker ſhall keep all ſtarch by him made and not ſurveyed, ſeparate from other ſtarch which hath been ſurveyed, for 24 hours after making within the bills, and for two days elſewhere, unleſs it ſhall be ſooner ſurveyed; on pain of 5 l. 10 *An. c.* 26. *ſ.* 20. Starch unſurveyed to be kept ſeparate.

15. The maker within the bills ſhall monthly, and elſewhere every ſix weeks, make entry in writing at the next office, of all the ſtarch by him made, ſetting forth the weight, and how much was made at each time; on pain of 50 l. Which entry ſhall be on oath of the maker, or his chief workman, according to the beſt of his knowledge Entry of ſtarch made.

and belief, before such officer as shall be appointed by the commissioners within the bills, and elsewhere before the collector and supervisor. 10 *An. c.* 26. *s.* 11.

But he shall not be obliged to go further to make entry, than to the next market town. *s.* 12.

Payment of the duties.

16. The maker within the bills, shall within four weeks, and elsewhere within six weeks after entry, clear off the duties; on pain of double duty: And no maker, after default in payment, shall sell or deliver out any starch until he hath cleared off the duty; on pain of double value. 10 *An. c.* 26. *s.* 13.

Carrying it coastwise.

17. Cocquets granted for shipping starch, to be landed in any other part of the kingdom, shall express the quality, quantity, and weight, the mark of the package, and by whom made and sold, and where consigned; and if shipped without such cocquet, it shall be forfeited and seized, together with the package. 23 *G.* 2. *c.* 21. *s.* 29.

Importation and exportation.

18. No starch shall be *imported* otherwise than in some package, containing at least 224 pounds of neat starch, and stowed openly in the hold; on pain of being seized and forfeited, together with the package, and the master of the vessel to forfeit 50 l. 23 *G.* 2. *c.* 21. *s.* 27.

But on information brought against such master, he may detain the wages of the mariners, till it be determined; and if it shall appear, that the starch was put on board by any mariner without the master's knowledge, the master may apply the wages of such mariner in payment of the forfeiture. 26 *G.* 2. *c.* 32. *s.* 8.

And the officers of excise (in like manner as the officers of the customs) may go on board any vessel, and search for and seize all starch forfeited, together with the package; and they may likewise seize such as before entry and payment of duties, shall be found unshipping or unshipped. 23 *G.* 2. *c.* 21. *s.* 28.

Starch that hath paid the duties may be *exported*; and the duties shall be drawn back. 10 *An. c.* 26. *s.* 25, 26, 27.

But no drawback shall be allowed on the exportation of any foreign starch imported. 23 *G.* 2. *c.* 21. *s.* 36.

And the officers of excise or customs may seize any starch or hair powder, with the horses and package, where they have good reason to suspect that it hath been privately made, or imported without payment of duty, or relanded after drawback; and shall in ten days exhibit an information before three commissioners of excise, or two justices near where the seizure is made; and if the party doth

doth not make it appear that the duty hath been paid, it ſhall be forfeited, together with the horſes and package; and the offender ſhall likewiſe forfeit 5 l. for every hundred weight. 4 *G.* 2. *c.* 14. *ſ.* 3.

And by the 23 *G.* 2. *c.* 21. it is enacted, that the ſaid officers may ſeize any ſtarch, with the package, that ſhall be found in any veſſel, cart, or other carriages, where they ſhall have good reaſon to believe that the ſame was made in ſome private workhouſe, or clandeſtinely imported, or reland after drawback; and if the party, at the hearing of the imformation, ſhall not make it appear that the duty hath been paid or ſecured, he ſhall forfeit 5 l. for every 100 pounds weight, and alſo the goods and package ſhall be forfeited. *ſ.* 30.

And if any foreign ſtarch ſhall be unſhipped, with intention to be laid on land before entry and payment of the duties, or ſhall be landed again after ſhipping for exportation on debenture; the ſame, together with the package, veſſels, boats, horſes, and other carriages, uſed in landing or conveying the ſame, ſhall be forfeited, and may be ſeized by any officers of the cuſtoms or exciſe; and the perſons from whom the ſame ſhall be ſeized, ſhall forfeit 5 l. for every hundred weight. 23 *G.* 2. *c.* 21. *ſ.* 31.

And if any perſon ſhall knowingly harbour or conceal any ſtarch unlawfully imported, or relanded after ſhipping for exportation upon debenture; he ſhall, whether he claims any property therein or not, forfeit 50 l. for every hundred weight, together with the goods and package. 23 *G.* 2. *c.* 21. *ſ.* 32.

And where any ſuch ſtarch ſhall be ſeized as forfeited, and no perſon ſhall claim the ſame in 20 days, if it is within the limits of the chief office of exciſe in *London*, the officer who made the ſeizure may cauſe notice ſigned by the ſolicitor of exciſe, to be affixed at the *Royal Exchange*, of the time of proceeding to trial and condemnation of the ſame by the commiſſioners of exciſe; and if it is out of the ſaid limits, then publick notice ſhall be given by proclamation, at the next market town, on the market day, next after the ſaid 20 days, of the day and place where the juſtices will proceed to trial and condemnation thereof: And the judgment thereon ſhall not be liable to appeal, nor be removed by certiorari. 23 *G.* 2. *c.* 21. *ſ.* 33.

19. No perfumer, peruke maker, barber, or dealer in hair powder, ſhall make, uſe, or offer to ſale, any powder made Making of hair powder.

made of or mixed with alabaſter, talke, plaiſter of paris, whiting, lime, or other thing of the like nature (ſweet ſcents only excepted); on pain of forfeiting the ſame, and 50l. 12 *An. ſt.* 2. *c.* 9. *ſ.* 20.

And by the 4 *G.* 2. *c.* 14. If any maker of hair powder, or other ſuch perſon, ſhall mix any powder of alabaſter, plaiſter of paris, talke, chalk, whiting, lime, or any other material (rice firſt made into ſtarch, and ſweet ſcents only excepted) with any ſtarch or powder of ſtarch to be made uſe of for making of hair powder, and ſhall make any hair powder with any the ſaid materials, or any other material except ſtarch or powder of ſtarch, or of rice firſt made into ſtarch, and ſhall uſe, ſell, or offer to ſell any hair powder ſo mixed or made; he ſhall forfeit the ſame, and 20l. *ſ.* 5.

Places of making hair powder to be entred;

20. Every maker of hair powder ſhall make entry in writing at the next exciſe office of his place of abode, and of his workhouſe or other place made uſe of for making hair powder; on pain of 20l. 4 *G.* 2. *c.* 14. *ſ.* 6.

Officer to enter the ſame and ſurvey.

21. And the officer, in the day time, on his requeſt, may enter places uſed for making hair powder, and the ſhops of perfumers, peruke makers, barbers, and other ſellers or dealers in hair powder, and examine the ſame, and carry away ſamples, paying a reaſonable price for the ſame. 4 *G.* 2. *c.* 14. *ſ.* 7.

And if ſuch ſtarch maker or dealer ſhall not on requeſt ſuffer him to enter, and examine, and take ſamples (on offering to pay the common price); he ſhall forfeit 20l. *id. ſ.* 9.

Perſon having in his poſſeſſion materials for adulterating hair powder.

22. And if any ſtarch maker, or dealer in hair powder, ſhall have in his poſſeſſion, for making, mixing, or counterfeiting hair powder, any alabaſter, plaiſter of paris, talke, chalk, whiting, lime, or other material, beſides ſtarch, or powder of ſtarch, or of rice firſt made into ſtarch; he ſhall forfeit the ſame, and 10l. 4 *G.* 2. *c.* 14. *ſ.* 8.

Power of the juſtices.

23. All the ſaid forfeitures ſhall be ſued for, levied and mitigated, as by the laws of exciſe, or in the courts at *Weſtminſter*; and be diſtributed half to the king, and half (and on the 10 *An. c.* 26. half with full coſts) to the proſecutor. 10 *An. c.* 26. *ſ.* 29. 24 *G.* 2. *c.* 40. *ſ.* 33.

Proof to lie on the claimer.

24. And where any ſtarch ſhall be ſeized for non-payment of duties, or non-entry, and it ſhall be diſputed whether ſuch payment or entry were made or not; the proof

proof ſhall lie on the claimer, and not on the officer. 23 *G.* 2. *c.* 21. *ſ.* 34.

25. And if the party is not ſatisfied with any judgment of the juſtices, on the act of 23 *G.* 2. *c.* 21. above-mentioned, he may appeal to the next quarter ſeſſions (except in the caſe before-mentioned, where no perſon ſhall claim the goods ſeized.) *ſ.* 36. Appeal.

26. And the mitigation on the ſaid act of 23 *G.* 2. ſhall not reduce the penalty to leſs than a fourth part, over and above the charges. *ſ.* 37. Mitigation.

27. And all ſtarch, materials, and utenſils, in cuſtody of the maker, or of any perſon to his uſe, ſhall be liable to all arrears of the duty, and penalties; and ſuch proceedings may be had thereupon, as if the debtor or offender were the lawful owner. 10 *An.* *c.* 26. *ſ.* 23. Utenſils liable.

XVI. Wire.

1. No foreign imbroidery, or gold or ſilver brocade, thread, lace, fringe, or work made thereof, or of copper, braſs, or other inferior metal, or gold or ſilver wire, or plate ſhall be imported. 15 *G.* 2. *c.* 20. *ſ.* 7. 22 *G.* 2. *c.* 36. *ſ.* 1. Importing of wire.

2. For all gilt wire made in *Great Britain* ſhall be paid a duty of 8 d. an ounce; for ſilver wire 6 d. an ounce, troy weight. 10 *An.* *c.* 26. *ſ.* 46. Duty on home wire.

3. And the commiſſioners of the treaſury ſhall appoint commiſſioners for theſe duties, who ſhall ſubſtitute inferior officers. 10 *An.* *c.* 26. *ſ.* 48. Officers for theſe duties.

4. And every perſon who ſhall draw any gold or ſilver into ſuch wire as is commonly called big wire, ſhall firſt give notice in writing at the next office for the ſaid duties, of his name and place of abode, and where he intends to work; on pain of 20 l. and no refiner, wire-drawer, or other perſon, ſhall draw any gold or ſilver into ſuch big wire, at any place other than ſome common bar houſe to be approved of by the commiſſioners; on pain of 20 l. 10 *An.* *c.* 26. *ſ.* 49. Places of making to be entred.

And all gilt and ſilver wire, and bars for making it, which ſhall be found in any private workhouſe, and all private utenſils for barring or drawing it, of which notice hath not been given, ſhall be forfeited and ſeized, or the value thereof recovered. 10 *An.* *c.* 26. *ſ.* 59.

5. And the officer ſhall at all times, by day or night, and if in the night in preſence of a conſtable be permitted on his requeſt to enter the barhouſe, workhouſe, or other Officer to enter and ſurvey.

place

place used for making of such wire, and take an account of the weight, and thereof make return in writing to the commissioners, or to whom they shall appoint, leaving a copy thereof, if demanded, with the maker; and if he shall refuse to leave such copy (after demand in writing 12 *G. c.* 28. *s.* 30.) he shall forfeit 40 s. 10 *An. c.* 26. *s.* 52.

Obstructing the officer.

6. And if any such maker shall obstruct the officer, in the execution of his office, he shall forfeit 20 l. 10 *An. c.* 26. *s.* 55.

Scales and weights.

7. And the maker shall keep weights and scales at the place of making the wire, and permit and assist the officer to weigh; on pain of 10 l. 10 *An. c.* 26. *s.* 54.

Ingots to be weighed.

8. Every ingot or bar of silver, designed for gilt wire, shall be weighed in the presence of the excise officer, who attends the forge where they are made, before they be covered with gold; and shall be weighed in presence of, and marked by the said officer, after the gold is laid on: and on refusal to admit the officer, the refiner or maker shall forfeit 20 l. half to the king, and half to him that shall sue. 15 *G.* 2. *c.* 20. *s.* 8, 9.

Allowance for waste.

9. If the officer's charge be made, by taking the weight of the gold and silver in big wire at the bar house, an allowance of one fifth part shall be made, in consideration of the waste, in reducing the same to small wire. 10 *An. c.* 26. *s.* 53.

Removing before surveyed.

10. No wire drawer shall (on pain of 40 l.) remove any gilt or silver wire, of which no account hath been taken, from the bar house or place of making, without giving to the officer 24 hours notice. 10 *An. c.* 26. *s.* 56.

Wire unsurveyed to be kept separate.

11. Wire not surveyed shall be kept separate from that which hath been surveyed, for 24 hours after making, unless it shall be sooner surveyed; on pain of 10 l. 10 *An. c.* 26. *s.* 57.

Concealing.

12. If the maker, or he for whom it is made, shall conceal any wire, or bars of silver prepared for making it; he shall forfeit 20 l. 10 *An. c.* 26. *s.* 58.

Entry of wire made.

13. The maker shall once in every month make entry in writing at the next office, of all the wire by him made, setting forth the weight, and kinds, and how much was made in each week; on pain of 100 l. Which entry shall be made on the oath of the maker, or his chief workman, to the best of his knowledge and belief, to be administred by the officer. 10 *An. c.* 26. *s.* 50.

14. And

14. And the duty ſhall be cleared off in ſix weeks after entry, on pain of double duty. 10 *An. c.* 26. *ſ.* 51. Payment of the duty.

15. If any perſon ſhall export any gold or ſilver thread, or lace or fringe made of plate wire, ſpun upon ſilk, he ſhall have a drawback after the rate of 5 s. a pound averdupois, of ſuch ſilver thread, lace, or fringe, and of 6 s. 8 d. a pound of ſuch gold thread, lace, or fringe. 10 *An. c.* 26. *ſ.* 62. Exportation.

16. All the powers of the exciſe laws ſhall be in force for managing theſe duties: and the penalties and forfeitures (not herein otherwiſe directed) ſhall be ſued for, levied, and mitigated, as by the laws of exciſe, or in the courts at *Weſtminſter*; and be imployed, half to the uſe of the king, and half to him that ſhall inform or ſue. 10 *An. c.* 26. *ſ.* 64. 24 *G.* 2. *c.* 40. *ſ.* 33. Power of the juſtices.

17. And all ſuch wire, materials, and utenſils, in cuſtody of any maker, or other to his uſe, ſhall be liable to the duties and penalties; and ſuch proceedings may be had thereupon, as if ſuch debtor or offender were the lawful owner. 10 *An. c.* 26. *ſ.* 60. Utenſils liable.

For regulations concerning the true making of gilt and ſilver wire (which do not belong to this place) ſee the act of 15 *G.* 2. *c.* 20.

And for prohibiting the ſelling or working up of foreign gold or ſilver lace or thread, ſee the 22 *G.* 2. *c.* 36.

Information againſt an alehouſekeeper for arrears.

Weſtmorland. BE *it remembred, that this* ——— *day of* ——— *in the* ——— *year of the reign of his majeſty king* George *the third that now is, at* ——— *in the ſaid county,* A. I. *gentleman, in his proper perſon, as well for his ſaid majeſty, as for himſelf, exhibited to us* A. P. *and* J. P. *eſquires, two of his ſaid majeſty's juſtices of the peace for the ſaid county, reſiding near to the place where the forfeiture herein after mentioned was made, a complaint and information, and thereby informeth us, that at ſeveral times between the* ——— *day of* ——— *and the* ——— *day of* ——— *both now laſt paſt, at* ——— *aforeſaid in the ſaid county, one* A. O. *at a common alehouſe then and there belonging to and uſed by him, did brew the ſeveral and reſpective quantities of beer and ale herein after mentioned; that is to ſay, 30 barrels of ſtrong beer and of ſtrong ale, each above 6 s.*

the

the barrel; and ſixty barrels of ſmall beer, not exceeding 6s. the barrel; and that the ſaid A. O. *at and during the reſpective time and times of brewing the ſaid beer and ale, and of every part thereof, was and yet is a common alehouſekeeper; and that there did thereby accrue and become due to his ſaid majeſty from the ſaid* A. O. *for the ſaid beer and ale ſo by him brewed as aforeſaid, certain rates, duties, and ſums of money, amounting in the whole to the ſum of* ——— *of lawful money of* Great Britain; *which ſaid rates, duties, and ſums of money ſo accrued, or any part thereof, the ſaid* A. O. *hath not paid or cleared off, to or for the uſe of his ſaid majeſty, within a month next after he, according to the ſtatute in that behalf made, did make, or ought to have made his entry or entries of the ſaid beer and ale ſo by him there brewed as aforeſaid, or of any part thereof, or at any time ſince; but the ſame yet remain wholly due and unpaid, contrary to the form of the ſtatute in ſuch caſe made and provided; whereby the ſaid* A. O. *hath forfeited double the value of the ſaid rates, duties, and ſums of money remaining unpaid, as aforeſaid; that is to ſay,* ——— *of like money; and thereupon the ſaid* A. I. *who as well for his ſaid majeſty, as for himſelf exhibiteth this information, prays the judgment of us the ſaid juſtices in the premiſſes, and that he may have one moiety of the ſaid forfeiture, according to the form of the ſtatute in ſuch caſe made; and that the ſaid* A. O. *may be ſummoned to anſwer the premiſſes before us the ſaid juſtices.*

Summons on the foregoing information.

To Mr. A. O. alehouſekeeper.

Weſtmorland. WE J. P. *and* K. P. *eſquires, two of his majeſty's juſtices of the peace for the ſaid county of* —— *do hereby give you notice that* A. I. *gentleman, hath exhibited before us an information againſt you for the ſum of* —— *being double the value of certain duties of exciſe of beer and ale by you brewed, the ſingle duties whereof (as he alledgeth) you ought long ſince to have paid, but have neglected ſo to do: You are therefore hereby required to appear before us at the houſe of* —— *at the ſign of the* —— *in* —— *in the ſaid county, on the* —— *day of* —— *now next enſuing, at the hour of* —— *in the forenoon of the ſaid day, then and there to anſwer to the ſaid information. And if you ſhall neglect ſo to do, we ſhall proceed as if you were perſonally preſent. And we do further authorize and require Mr.* A. E. *officer of*

of exciſe, or any other officer of exciſe, to ſerve this our ſummons, and to attend us at the time and place laſt mentioned, then and there to make a return thereof to us the ſaid juſtices. Given under our hands and ſeals at —— in the ſaid county, the —— day of —— in the —— year of the reign of his ſaid majeſty king George *the third.*

Note; the officer who ſhall ſerve the ſummons, ought not to be the informer or proſecutor, for this obvious reaſon, becauſe that he, being intitled to a ſhare of the forfeiture, is not a proper witneſs to prove ſuch ſervice; for that would be admitting him to ſwear for himſelf in his own cauſe, which is abhorrent from the nature of our laws.

Information againſt a malſter for concealing a quantity of malt.

Weſtmorland. BE *it remembred, that this —— day of —— in the —— year of the reign of his majeſty king* George *the third, at —— in the ſaid county,* A. I. *gentleman, in his proper perſon, as well for his ſaid majeſty as for himſelf, exhibiteth to us* J. P. *and* K. P. *eſquires, two of his ſaid majeſty's juſtices of the peace for the ſaid county, reſiding near to the place where the offence herein after mentioned was committed, as is alledged, a complaint or information, and thereby informeth us, that* A. O. *of —— in the ſaid county, during three months now laſt paſt and longer, having been and continued to be, and yet being a malt-ſter and maker of malt, and not having compounded for the duties of the malt herein after mentioned, he the ſaid* A. O. *within three months now laſt paſt, at —— in the ſaid county did fraudulently hide, conceal, and convey away malt by him made, that is to ſay,* 12 *buſhels of malt by him ſo made as aforeſaid, from the ſight and view of one* A. E. *being at the ſaid time of the ſaid hiding and concealing thereof, and long before, and ever ſince, the gager appointed to take an account of the ſame, and then and there endea-vouring to take ſuch account; which hiding, concealing, and conveying away as aforeſaid, are contrary to the form of the ſtatute in ſuch caſe made and provided: Whereby he the ſaid* A. O. *for every buſhel of the ſaid malt ſo hid and conceal-ed, hath forfeited* 10*s. of lawful money of* Great Britain, *amounting in the whole to* 6*l. of like money. And there-upon the ſaid* A. I. *who as well for his ſaid majeſty as*

for himself exhibiteth this information, prays the judgment of us the said justices in the premisses, and that he may have one moiety of the said forfeiture, according to the form of the statute in such case made; and that the said A. O. *may be summoned to answer the said premisses, before us the said justices.*

Summons on the foregoing information.

Westmorland. { To Mr. A. O. maltster.

WE J. P. *and* K. P. *esquires. two of his majesty's justices of the peace, for the county aforesaid, do hereby give you notice, that* A. I. *gentleman, hath exhibited before us an information against you for the penalty of* 6 *l. by you forfeited for hiding, concealing and conveying away* 12 *bushels of malt, from the sight and view of the gager appointed to take an account of the same, against the form of the statute in such case made: You are therefore hereby required to appear before us, at the house of* ——— *at the sign of* —— *in* ——— *in the said county, on the* ——— *day of* ——— *now next ensuing, at the hour of* ——— *in the forenoon of the same day, then and there to answer to the said information. And if you neglect so to do, we shall proceed as if you were personally present. And we do further authorize and require Mr.* A. E. *officer of excise, or any other officer of excise, to serve this our summons, and to attend us at the time and place last mentioned, then and there to make a return thereof to us the said justices. Given under our hands and seals at* ——— *in the said county, this* ——— *day of* ——— *in the* ——— *year of the reign of his said majesty king* George *the third.*

Summons to give evidence.

Westmorland. { To A. W. of —— yeoman.

WHEREAS *we whose hands and seals are hereunto set, being two of his majesty's justices of the peace in and for the said county, have received information, that* A. O. *of* ——— *in the said county, alehousekeeper, did on the* —— *day of* ——— *now last past, brew and sell ale and beer, and hath*

hath not made entry thereof, according to the ſtatute in that behalf made; and that you the ſaid A. W. *are a material witneſs to be examined concerning the ſame: Theſe are therefore to require you to appear before us at the houſe of* ——— *at the ſign of the* ——— *in the ſaid county, on the* ——— *day of* ——— *now next enſuing, at the hour of* ——— *in the forenoon of the ſame day, to teſtify your knowledge concerning the premiſſes. Herein fail you not. Given under our hands and ſeals at* ——— *in the ſaid county, the* —— *day of* ——— *in the* ——— *year of the reign of his ſaid majeſty king* George *the third.*

Judgment againſt the defendant.

AT *the time and place appointed by our ſummons on the information within written; that is to ſay, this* ——— *day of* ——— *in the* ——— *year of the reign of our ſovereign lord king* George *the third, at* ——— *in the county of* —— *within mentioned; the within named defendant* A. O. *appeareth, and pleadeth that he is not guilty of the offence within mentioned; but upon a due and full hearing of the proofs made in and concerning the premiſſes, we do convict him thereof:* [Or ——— *ſufficient proof being made before us, that the within named defendant* A. O. *hath had due notice of the within written information, and that he was duly ſummoned to appear before us here this day; and he, in contempt of the ſaid ſummons, neglecting now to appear and making default therein; and the fact and offence in the within written information being now fully proved before us, we do convict him thereof:*] *It is therefore now here conſidered and adjudged by us the ſaid juſtices, that the ſaid defendant hath forfeited the within mentioned ſum of* 50 *l. (which we mitigate and leſſen to the ſum of* 7 *l.) to be diſtributed as the law directs. Given under our hands and ſeals, at* ——— *aforeſaid, this* ——— *day of* ——— *in the* ——— *year of the reign of our ſaid ſovereign lord king* George *the third.*

Warrant of distress.

Westmorland. { To A. E. and B. E. officers of excise, and to either of them, and to such other person and persons as they or either of them shall take to his or their assistance.

WE *whose hands and seals are hereunto set, two of his majesty's justices of the peace for the said county of—— do in his said majesty's name, authorize and command you and every of you, that upon the brewing vessels and utensils for brewing used by* A. O. *of——in the said county, innkeeper, in the brewhouse and place where he usually brews, at——aforesaid, and upon the goods and chattels of the said* A. O. *you or any of you do levy the sum of* 20 *l. of lawful money of* Great Britain, *by us mitigated and lessened from the sum of* 50 *l. of like money recovered against him by* A. I. *gentleman, who prosecuted as well for our sovereign lord the king, as for himself, for a certain offence committed by the said* A. O. *against the laws and statutes of excise, whereof he the said* A. O. *is convicted before us; And for the levying thereof you are to seize, take, and carry away the said brewing vessels and utensils for brewing, and also the goods and chattels aforesaid; and if in* [*eight*] *days next after such seizure, the said sum of* 20 *l. together with the reasonable charges of taking and keeping the said vessels and utensils, goods and chattels, shall not be paid, then, and in such case (after the expiration of the said——days) you are to make sale thereof or so much thereof as shall be sufficient for the purposes herein specified; which said sum of* 20 *l. when so levied as aforesaid, you are forthwith to pay to the collector of excise for the collection called——collection, for the time being; to be by him distributed and answered, according to the statute in such case made and provided: and after levying thereof, the overplus which shall remain of the said brewing vessels and utensils for brewing, and of the said goods and chattels, and of the money arising by such sale, you are to return unto the said* A. O. *upon demand, the reasonable charges of taking, keeping, and selling the said vessels and utensils, goods and chattels, being out of the said overplus money first deducted.*

And all constables and other peace officers of the said county are hereby required to be aiding and assisting to you in the due execution hereof. But in case there cannot be found sufficient to raise the sum last mentioned, then and in such case, you are by a return to this our warrant, forthwith to certify the same, to us the said justices. Given under our hands and seals at——in the

the said county, this——day of——in the——year of his said majesty's reign, and in the year of our lord——

Return of the want of distress.

Westmorland. I A. E. *one of the officers of his majesty's duties of excise, do hereby certify to* J. P. *and* K. P. *esquires, two of his said majesty's justices of the peace for the said county, that by virtue of a warrant from the said justices to levy the sum of* 20*l. upon the brewing vessels and utensils for brewing used by* A. O. *in his usual place of brewing, and upon his goods and chattels, I have made diligent search for such vessels, utensils, goods, and chattels; and that I can find none such; and that I do not know, nor can find, that the said* A. O. *hath any goods or chattels whatsoever. Witness my hand hereunto set, at——in the said county, this——day of——in the year of our lord——*

Warrant of commitment.

Westmorland. To A. E. and B. E. officers of excise, and to either of them, and to such person or persons as they or either of them shall take to their assistance: And to the gaoler or keeper of such prison to whom these presents shall come.

WHEREAS *we whose hands and seals are hereunto set, two of his majesty's justices of the peace for the said county of——by our warrant under our hands and seals, bearing date the——day of——now instant, did require and command you the said* A. E. *and* B. E. *or either of you, to levy the sum of* 20*l. therein mentioned on the brewing vessels and utensils for brewing, used by* A. O. *of——in the said county, innkeeper, and upon the goods and chattels of the said* A. O. *And whereas you the said* A. E. *and* B. E. *by a return and certificate under your hands, bearing date the——day of——now instant, have certified to us, that having made diligent search for such brewing vessels and utensils for brewing, and for such goods and chattels, you cannot find any whereon to levy the said* 20*l. or any part thereof, and that no such vessels, utensils, goods or chattels can be found: We therefore the said justices do in his majesty's name hereby authorize, require and command you, every, or any of you, to take and arrest the body of him the said* A. O. *and forthwith to carry him to the gaol or prison of and for the county or place where you shall so take and*

arrest him; and him, together with a duplicate of this our warrant, there to deliver into the custody of the gaoler or keeper of the said gaol or prison of and for the said county or place, there to remain in safe custody until he shall satisfy and pay the said sum of 20 *l. of lawful money of* Great Britain, *by us mitigated and lessened from the sum of* 50 *l. of like money, by us the said justices adjudged against him, upon an information exhibited against him before us by* A. I. *gentleman, as well on the behalf of his said majesty, as of himself, for a certain offence committed by the said* A. O. *against the laws and statutes of excise, whereof he stands convicted before us the said justices. And all constables, and other his majesty's officers, are hereby authorized and required, to be aiding and assisting to you in the due execution hereof. And the gaoler and gaolers, keeper and keepers of such prison or gaol to which you shall so carry the body of the said* A. O. *is and are hereby authorized and required, to receive into his or their custody the body of the said* A. O. *and the same to keep in safe custody until he shall satisfy and pay the said sum of* 20 *l. before mentioned. And for your, any, or either of your doing as is before respectively directed, this shall be to you, any, or either of your respectively, a sufficient warrant and authority. Given under our hands and seals at——in the said county, this ——day of——in the——year of the reign of his said majesty, and in the year of our lord——*

More precedents it is not necessary to add, since the officers of excise are generally well furnished with printed forms drawn by good advice.

Note; These statutes abovementioned, relating to this title are but temporary, and have their continuance as follows,

8 *G. c.* 18. Spirituous liquors. By the 33 *G.* 2. *c.* 16. to *Sep.* 29. 1767, and from thence to the end of the then next sessions of parliament.

5 *G.* 2. *c.* 24. Coffee. By the 6 *G.* 3. *c.* 44. to *June* 24. 1774. and from thence to the end of the then next session of parliament.

15 *G.* 3. *c.* 25. Rum. By the 4 *G.* 3. *c.* 12. to *Sep.* 29. 1771, *&c.*

19 *G.* 2. *c.* 34. Outlawed smugglers. By the 4 *G.* 3. *c.* 12. to *Sep.* 29. 1771, *&c.*

Execution.

1. WHERE a perſon attainted hath been at large after his attainder, and afterwards is brought into court and demanded why execution ſhould not be awarded againſt him; if he deny that he is the ſame perſon, it ſhall be immediately tried by a jury returned for that purpoſe. 2 *Haw.* 463.

2. The court may command execution to be done, without any writ. 2 *Haw.* 463.

3. In fixed and ſtated judgments, the law makes no diſtinction between a peer and a commoner, or between a common and ordinary caſe, and one attended with extraordinary circumſtances; for which reaſon it was adjudged in *Felton*'s caſe, who murdered the duke of *Buckingham*, that the court could not order his hand to be cut off, nor make it part of the ſentence that his body ſhould be hanged in chains, but that the body after execution being at the king's diſpoſal, might be hanged in chains, or otherwiſe ordered as the king ſhould think fit. 2 *Haw.* 443.

4. But the king may pardon part of the judgment; as where the judgment is hanging, beheading, imbowelling, and the like, the king may pardon all but the beheading; whereby the judgment is not altered, but part of it remitted. 2 *H. H.* 412.

5. It is clear, that if a man condemned to be hanged, come to life after he be hanged, he ought to be hanged again; for the judgment was not executed till he was dead. 2 *Haw.* 463.

Exigent. See Proceſs.

Extortion.

IT is ſaid, that extortion, in a large ſenſe, ſignifies any oppreſſion under colour of right; but that, in a ſtrict ſenſe, it ſignifies the taking of money by any officer, by colour of his office, either where none at all is due, or

not ſo much is due, or where it is not yet due. 1 *Haw.* 170.

And by the ſtatute of the 3 *Ed.* 1. *c.* 26. (which is only in affirmance of the common law) *No ſheriff, nor other the king's officer, ſhall take any reward to do his office, but ſhall be paid of that which they take of the king; and he that ſo doth, ſhall yield twice as much, and ſhall be puniſhed at the king's pleaſure.*

No ſheriff nor other the king's officer] Under theſe words, the law beginning with the *ſheriffs*, are underſtood eſcheators, coroners, bailiffs, gaolers, and other inferior officers of the king, whoſe offices were inſtituted before the making of this act, which do any way concern the adminiſtration or execution of juſtice, or the common good of the ſubject, or for the king's ſervice. 2 *Inſt.* 209.

Alſo the juſtices of the peace, whoſe office was inſtituted after this act, are bound by their oath of office, to take nothing for their office of juſtice of the peace to be done, but of the king, and fees accuſtomed, and coſts limited by ſtatute.

And generally, no publick officer ſhall take any other fees or rewards, for doing any thing relating to his office, than ſome ſtatute in force gives him, or elſe as hath been antiently and accuſtomably taken; and if he do otherwiſe, he is guilty of extortion. *Dalt. c.* 41.

Shall take any reward] Therefore by this ſtatute, they can at this day take no more for doing their office, than hath been ſince allowed to them by authority of parliament. 2 *Inſt.* 210.

And all preſcriptions which have been contrary to this ſtatute, and to the common law in affirmance of which it is made, have been always holden to be void. 1 *Haw.* 170.

And it has been reſolved, that a promiſe to pay them money for the doing of a thing, which the law will not ſuffer them to take any thing for, is merely void. 1. *Haw.* 171.

To do his office] It is not ſaid, that he ſhall take no reward generally, but no reward to do his office: Thus the fee of 20 d. called bar fee, time out of mind taken by the ſheriff of every priſoner that is acquitted, is not againſt this ſtatute; for it is not taken for doing his office. 2 *Inſt.* 210.

But

But there ſeems to be no neceſſity for this diſtinction, for it cannot be intended to be the meaning of the ſtatute to reſtrain the courts of juſtice, in whoſe integrity the law always repoſes the higheſt confidence, from allowing reaſonable fees for the labour and attendance of their officers; for the chief danger of oppreſſion is from officers being left at their liberty to ſet their own rates on their labour, and make their own demands; but there cannot be ſo much fear of theſe abuſes, while they are reſtrained to known and ſtated fees, ſettled by the diſcretion of the courts, which will not ſuffer them to be exceeded, without a proper reſentment. 1 *Haw.* 171.

But in the eccleſiaſtical court, a perſon was libelled againſt for fees, and upon motion a prohibition was granted, for that it was holden that no court hath a power to eſtabliſh fees: the judge of a court may think them reaſonable, but that is not binding; but if on a *quantum meruit* a jury think them reaſonable, then they become eſtabliſhed fees. 1 *Salk.* 333.

The fees in ſeſſions, for traverſing, trying, or diſcharging indictments, diſcharging recognizances, and the like, do vary according to the different cuſtoms in different places. *Dalt. c.* 41.

Shall yield twice as much] At the common law this offence is ſeverely puniſhable at the king's ſuit, by fine and impriſonment, and alſo by a removal from the office in the execution whereof it was committed. And this ſtatute doth add a greater penalty than the common law did give; for hereby the plaintiff ſhall recover his double damages. 2 *Inſt.* 210. 1 *Haw.* 171.

And by the 31 *El. c.* 5. Actions for extortion may be laid in any county.

At the king's pleaſure] That is, by the king's juſtices, before whom the cauſe depends. 2 *Inſt.* 210.

Indictment for extortion in a gaoler.

THE *jurors for our lord the king, upon their oath preſent, that* A. O. *late of* ——— *in the ſaid county, yeoman, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *was taken upon ſuſpicion of having committed a certain felony, by* ——— *conſtable of* ——— *in the ſaid county, by virtue of a warrant directed to the ſaid* —— *under the hand and ſeal of Sir* William Dalſton, *knight, then and yet one of the juſtices of our ſovereign lord the king, aſſigned*

to keep the peace in the ſaid county, and was on the ſame day and year committed by him the ſaid Sir William Dalſton, *to* A. G. *keeper of the gaol of our ſaid ſovereign lord the king at ———in the ſaid county, under the cuſtody of him the ſaid* A. G. *to be ſafely kept, upon ſuſpicion of the felony aforeſaid, and the ſaid* A. O. *was detained in that priſon under the cuſtody of the ſaid* A. G. *from the time that he was committed to the ſaid priſon for one month from thence next enſuing, upon ſuſpicion of the ſaid felony; nevertheleſs the ſaid* A. G. *in no wiſe regarding the ſtatute in that caſe made, and the penalty therein contained, did on the———day of———at———aforeſaid, in the ſaid county, demand and receive———pounds of lawful money of* Great Britain *of and from the ſaid* A. O. *for eaſe and favour in the ſaid gaol for the ſaid time, in contempt of our ſaid ſovereign lord the king, and againſt the form of the ſtatute aforeſaid, and againſt the peace of our ſaid ſovereign lord the king, his crown and dignity.*

Indictment for extortion of a bailiff.

THE *jurors for our lord the king upon their oath preſent, that* A. B. *late of———in the ſaid county yeoman, being bailiff of the hundred of———in the ſaid county, on the———day of———in the———year of the reign of——— at———in the ſaid county, by pretext and colour of his ſaid office, did unjuſtly and by extortion take and extort* 5*s. of one* A. I. *of———in the ſaid county, yeoman, one of the freeholders qualified to ſerve upon juries in the ſaid county to excuſe the ſaid* A. I. *from attending or appearing at the aſſizes that were then next to be holden in and for the ſaid county, when in fact the ſaid* A. I. *was not returned by the ſheriff of the ſaid county in any panel of jurors, and alſo when indeed no ſuch ſum of money was due to the ſaid* A. B. *for his fee for excuſing the attendance or appearance of the ſaid* A. I. *at the aſſizes aforeſaid, to the evil example of other offenders, to the great damage of him the ſaid* A. I. *and againſt the peace of our ſaid lord the king, his crown and dignity.*

False tokens. See Cheat.

Fast days.

BY the 2 & 3 *Ed.* 6. *c.* 19. for the encouragement of the fisheries, and the increase of cattle; and the 5 *El. c.* 5. intitled, an act touching political constitutions for the maintenance of the navy; and by the 35 *El. c.* 7. it is enacted as follows.

No person shall eat any manner of flesh on any *Friday* or *Saturday*, or the embring days, or in *Lent*, nor on any other day commonly reputed a fish day; on pain of forfeiting 20 s. or being imprisoned one month.

And every person in whose house any flesh shall be eaten on fish days, and not disclosing the same to a publick officer having authority to punish the same; shall forfeit 13 s. 4 d.

Which said forfeitures shall be, one third to the king, one third to the informer, and one third to the common use of the parish where the offence shall be committed; to be levied by the churchwardens after conviction.

Prosecution to be at the assizes or sessions, in three months after the offence committed.

But nothing herein shall extend to any person having the king's licence; or being in great age, and weakness thereby, or sick, or notably hurt; or a woman with child, or lying in child-bed, for eating of such one kind of flesh as she shall have great lust unto; or in prison, nor to the king's lieutenant, deputy, or captain in his armies, but the same may eat, or license his soldiers to eat flesh for lack of other victual; nor to persons licensed by the archbishop of *Canterbury*.

And such licences shall be on condition, that the person licensed shall within six days after *Candlemas*, pay to the poor box where he dwells, if he be a lord 26 s. 8 d. a knight 13 s. 4 d. and all others 6 s. 8 d.

But sick persons may be licensed by the bishop of the diocese, or by the parson, vicar, or curate of the parish, or (if there be none, or he be wilful) of the next parish; and if the sickness continues above eight days, the licence

cence ſhall be regiſtred in the church book, with the knowledge of a churchwarden; and the curate ſhall have 4 d. for entry; and the ſame to endure no longer than ſuch ſickneſs.

And no licence ſhall extend to the eating any beef at any time of the year, nor veal from *Sep.* 29. to *May* 1. in any year.

And perſons licenſed (except for ſickneſs) ſhall for every diſh of fleſh at their table, have one diſh of ſea fiſh.

Fees. See **Extortion.**
Felo de ſe. See **Homicide.**

Felony, Miſpriſion of Felony, and Theftbote.

I. Felony.

FELONY is generally ſuppoſed to come from the Saxon *fell*, which ſignifieth fierce or cruel; of which the verb *fell* ſignifieth to throw down or demoliſh; and the ſubſtantive of that name is uſed to ſignify a mountain rough and uncultivated. But the ſame word, with a little variation, runneth through moſt of the *European* languages, and ſignifieth more generally an offence at large; and the Saxon word *fællan* ſignifieth to offend, and *fællniſſe* an offence or *failure*; and altho' *felony*, as it is now become a technical term, ſignifieth in a more reſtrained ſenſe an offence of an high nature, yet it is not limited to *capital* offences only, but ſtill retaineth ſomewhat of this larger acceptation; for petit larceny is felony, altho' it is not capital.

It would ſwell this title near to the bigneſs of half the book, to ſet down every thing which may be comprehended under this word *felony*: therefore it is neceſſary to refer the conſideration of the ſeveral particular kinds of felonies to their reſpective titles; as for inſtance, *Homicide*, *Robbery*, *Burglary*, *Rape*, *Coin*, *Forgery*, and many others; and eſpecially the law relating to ſtolen goods of all kinds belongs to title *Larceny*.

The

The method of bringing a felon to juſtice from the firſt commiſſion of the felonly, to his condemnation and execution, is treated of under the ſeveral titles of *Hue and cry*, *Arreſt*, *Examination*, *Bail*, *Commitment*, *Gaol*, *Arraignment*, *Appeal*, *Indictment*, *Mute*, *Confeſſion*, *Jurors*, *Evidence*, *Clergy*, *Judgment*, *Attainder*, *Forfeiture*, *Tranſportation*, *Execution*. And the courſe and whole procedure of trying an offender, is treated of under title *Seſſions*.

So that there is nothing left for this place, but to take notice of one circumſtance which is common to all felonies in general, and that is, concerning the charges of proſecution.

By the 3 *J. c.* 10. The felon ſhall pay the charges of his carrying to gaol, if able; to by levied by diſtreſs by warrant of one juſtice.

And by the ſtatute of the 27 *G.* 2. *c.* 3. if he is not able, the ſame ſhall be paid, by order of ſuch juſtice, by the treaſurer out of the county rate; and in *Middleſex* by the overſeers of the poor where the party was apprehended.

And by the 25 *G.* 2. *c.* 36. the court, before whom any perſon hath been tried and convicted of any grand or petit larceny, or other felony, may at the prayer of the proſecutor, and on conſideration of his circumſtances, order the treaſurer of the county in which the offence ſhall have been committed, to pay him ſuch ſum as they ſhall judge reaſonable, not exceeding the expences he was put to in carrying on the proſecution, with a reaſonable allowance for his time and trouble; and the clerk of aſſize, or of the peace, ſhall forthwith make out ſuch order, and deliver the ſame to the proſecutor, on paying 1 s. and the treaſurer ſhall pay the ſame on ſight, and be allowed the ſame in his accounts.

And by the aforeſaid act of the 27 *G.* 2. *c.* 3. When any poor perſon ſhall appear on recognizance to give evidence, the court may order the treaſurer to pay him ſuch ſum as they ſhall think reaſonable, for his time, trouble, and expences, (whether the perſon hath been convicted or not); which order the proper officer ſhall make out for the fee of 6 d. Except in *Middleſex*, where the ſame ſhall be paid by the overſeers of the poor where the perſon was apprehended.

II. Miſpriſion of felony.

Miſpriſon of felony (from the *French* word *meſpris*, a neglect or contempt, 3 *Inſt.* 36.) is the concealing of a felony which a man knows, but never conſented to: for if he conſented, he is either a principal or acceſſary in the felony, and conſequently guilty of miſpriſion of felony and more. 1 *H. H.* 374.

For it is ſaid, that every felony includes miſpriſion of felony, and may be proceeded againſt as a miſpriſion only, if the king pleaſes. 1 *Haw.* 125.

The puniſhment of miſpriſion of felony in a common perſon, is fine and impriſonment; in an officer, as ſheriff or bailiff of liberties, impriſonment for a year, and ranſom at the king's pleaſure, by the ſtatute of 3 *Ed.* 1. *c.* 9.

If any perſon will ſave himſelf from the crime of miſpriſon, he muſt diſcover the offence to a magiſtrate with all ſpeed that he can. 3 *Inſt.* 140.

Miſpriſion, in a larger ſenſe, is uſed to ſignify every conſiderable miſdemeanor, which hath not a certain name given to it in the law.

III. Theftbote.

Theftbote (from the *Saxon* words *theft*, and *bote*, boot or amends) is, where one not only knows of a felony, but takes his goods again, or other amends not to proſecute. 1 *Haw.* 125.

But the bare taking of one's own goods again, which have been ſtolen, is no offence, unleſs ſome favour be ſhewn to the thief. 1 *Haw.* 125.

This offence is very nearly allied to felony, and is ſaid to have been anciently puniſhed as ſuch; but at this day it is puniſhable only with ranſom and impriſonment, unleſs it were accompanied with ſome degree of maintenance given to the felon, which makes the party an acceſſary after the fact. 1 *Haw.* 125.

Warrant for felony.

Weſtmorland. { To the conſtable of ——

FORASMUCH *as* A. I. *of* ——— *in the county of* ——— *yeoman, hath this day made information and complaint upon oath, before me* ——— *one of his majeſty's juſtices of the peace for the ſaid county, that this preſent day divers goods of him the ſaid* A. I. *to wit,* ——— *have feloniouſly been ſtolen, taken, and carried away from the houſe of him the ſaid* A. I. *at* ——— *aforeſaid, in the county aforeſaid, and that he hath juſt cauſe to ſuſpect, and doth ſuſpect that* A. O. *late of* ——— *yeoman, feloniouſly did ſteal, take and carry away the ſame* [Or otherwiſe as the caſe ſhall be :] *Theſe are therefore to command you forthwith to apprehend him the ſaid* A. O. *and to bring him before me to anſwer unto the ſaid information and complaint, and to be further dealt withal according to law. Herein fail you not. Given under my hand and ſeal the* ——— *day of* ——— *in the year.* ———.

The forms of indictments for ſtolen goods of various kinds, are inſerted under the title **Larceny.**

Feme covert. See **Wife.**

Fern, Burning of it in foreſts. See **Burning.**

Fire. See **Burning.**

Fire in London.

THE acts relating thereto are,

6 *An. c.* 31.
7 *An. c.* 17.
11 *G. c.* 28.
4 *G.* 3. *c.* 14.

Fireworks.

Fireworks a nuſance.

1. IT ſhall not be lawful for any perſon (of what age, ſex, degree, or quality ſoever) to make or cauſe to be made, or to ſell or expoſe to ſale, any ſquibs rockets, ſerpents, or other fireworks, or any caſes, moulds or other implements for making the ſame; or to permit the ſame to be caſt or fired from his houſe or other place thereto belonging, into any publick ſtreet or road; or to throw or fire, or be aiding in throwing or firing the ſame, in any publick ſtreet, houſe, ſhop, river, or highway; and every ſuch offence ſhall be adjudged a common nuſance. 9 & 10 *W. c.* 7. *ſ.* 1.

Making or ſelling rockets.

2. And if any perſon ſhall make or cauſe to be made, or give, ſell, or offer to ſale, any ſquibs, rockets, ſerpents, or other fireworks, or any caſes, moulds, or other implements for making the ſame; he ſhall on conviction before one juſtice, or chief magiſtrate, by confeſſion, or oath of two witneſſes, forfeit 5 l. half to the poor, and half to the proſecutor; to be levied by diſtreſs, by warrant of ſuch juſtice or chief magiſtrate. 9 & 10 *W. c.* 7. *ſ.* 2.

Suffering rockets to be fired.

3. And if any perſon ſhall permit any the ſame to be caſt or fired, from his houſe or other place thereto belonging, into any publick ſtreet or road, or any other houſe or place; he ſhall forfeit 20 s. in like manner. 9 & 10 *W. c.* 7. *ſ.* 2.

Firing rockets.

4. And if any perſon ſhall caſt or fire, or be aiding in caſting or firing any the ſame, into any publick ſtreet, houſe, ſhop, river or highway; he ſhall forfeit 20 s. in like manner; and if he ſhall not immediately on conviction pay to the juſtice the ſaid forfeiture for the uſes aforeſaid, he ſhall commit him to the houſe of correction to be kept to hard labour for any time not exceeding one month, unleſs he ſhall ſooner pay the forfeiture. 9 & 10 *W. c.* 7. *ſ.* 3.

Exception.

5. But nothing herein ſhall extend to the officers of the ordinance, or artillery company. 9 & 10 *W. c.* 7. *ſ.* 4, 5.

Fiſh and fiſhing. See **Game.**
Fiſh ſalted. See **Exciſe.**
Flight. See **Forfeiture.**

Forcible entry and detainer.

FORCE, in the common law, is moſt commonly taken in ill part, for unlawful violence. 1 *Inſt.* 161.

It ſeems that at the common law, a man diſſeiſed of any lands or tenements, if he could not prevail by fair means, might lawfully regain the poſſeſſion thereof by force, unleſs he were put to a neceſſity of bringing his action, by having neglected to re-enter in due time: And it ſeems certain, that even at this days he who is wrongfully diſpoſſeſſed of his *goods*, may juſtify the retaking of them by force from the wrong doer, if he refuſe to redeliver them; for the violence which happens thro' the reſiſtance of the wrongful poſſeſſor, being originally owing to his own fault, gives him no juſt cauſe of complaint, inaſmuch as he might have prevented it by doing as he ought. 1 *Haw.* 140.

But this indulgence of the common law, in ſuffering perſons to regain the lands they were unlawfully deprived of, having been found by experience to be very prejudical, to the publick peace, by giving an opportunity to powerful men under the pretence of feigned titles, forcibly to eject their weaker neighbours, and alſo by force to retain their wrongful poſſeſſions, it was thought neceſſary by many ſevere laws to reſtrain all perſons from the uſe of ſuch violent methods of doing themſelves juſtice. 1 *Haw.* 141.

However even at this day, in an *action* of forcible entry grounded on thoſe laws, if the defendant make himſelf a title which is found for him, he ſhall be diſmiſſed without any inquiry concerning the force; for howſoever he may be puniſhable *at the king's ſuit*, for doing what is prohibited by ſtatute, as a contemner of the laws, and diſturber of the peace, yet he ſhall not be liable to pay any damages for it to the plaintiff, whoſe injuſtice gave him the provocation in that manner to right himſelf. 1 *Haw.* 141.

Since therefore offences of this nature are made ſuch, not by the common law, but by ſtatute (after having premiſed, that *they who keep poſſeſſion with force, in lands and tenements, whereof they or their anceſtors, or they whoſe eſtate they have in the ſame, have continued their poſſeſſion in the ſame, by three whole years next before without interruption,*

ſhall

ſhall not be endamaged by force of any of the ſtatutes concerning forcible entry, 8 H. 6. c. 9. ſ. 7. 1 Haw. 152.) I ſhall conſider thoſe ſeveral ſtatutes, with the interpretation that hath been put upon them, under the following heads:

I. What is a forcible entry.
II. What is a forcible detainer.
III. How the ſame are puniſhable by action at law.
IV. How puniſhable at the general ſeſſions.
V. How puniſhable by one juſtice.
VI. How puniſhable on a certiorari.
VII. How puniſhable as a riot.

I. What is a forcible entry.

By the 5 *R.* 2. *c.* 8. *None ſhall make any entry into any lands or tenements (or benefice of holy church*, 15 R. 2. c. 2. *or other poſſeſſions*, 8 H. 6. c. 9. ſ. 2.*) but where entry is given by the law; and in ſuch caſe not with ſtrong hand, nor with multitude of people, but only in peaceable and eaſy manner; on pain of impriſonment and ranſom at the king's will.*

Or other poſſeſſions] It ſeems clear, that no one can come within the danger of theſe ſtatutes, by a violence offered to another in reſpect of a *way*, or ſuch like eaſement, which is no poſſeſſion. And there ſeems to be no good authority, that an indictment will lie in this caſe for a *common*, or *office*. 1 Haw. 146.

Not with ſtrong hand, nor with multitude of people] It ſeems certain, that if one who pretends a title to lands, barely go over them, either with or without a great number of attendants, armed or unarmed, in his way to the church or market, or for ſuch like purpoſe, without doing any act, which either expreſsly or impliedly amounts to a claim of ſuch lands, he cannot be ſaid to make an entry thereinto. 1 *Haw.* 144.

But it ſeemeth, that if a perſon enter into another man's houſe or ground, either with apparent violence offered to the perſon of any other, or furniſhed with weapons, or company, which may offer fear, tho' it be but to cut, or take away another man's corn, graſs, or other goods, or to ſell or crop wood, or do any other like treſpaſs, and tho' he do not put the party out of his poſſeſſion, yet it ſeemeth to be a forcible entry. *Dalt. c.* 126.

But if the entry were peaceable, and after ſuch entry made, they cut or take away any other man's corn, graſs, wood, or other goods, without apparent violence or force; tho' ſuch acts are counted a diſſeiſin with force, yet they are not puniſhable as forcible entries. *Dalt. c.* 126.

But if he enter peaceably, and there ſhall by force or violence cut or take away any corn, graſs, or wood, or ſhall forcibly or wrongfully carry away any other goods there being; this ſeemeth to be a forcible entry puniſhable by theſe ſtatutes. *Dalt. c.* 126.

So alſo ſhall thoſe be guilty of a forcible entry, who having an eſtate in land, by a defeaſible title, continue with force in the poſſeſſion thereof, after a claim made by one who had a right of entry thereto. 1 *Haw.* 145.

But he who barely agrees to a forcible entry made to his uſe, without his knowledge or privity, ſhall not be adjudged to make an entry within theſe ſtatutes, becauſe he no way concurred, or promoted the force. 1 *Haw.* 145.

And, in general, it ſeemeth clear, that to denominate the entry forcible, it ought to be accompanied with ſome circumſtances of actual *violence*, or *terror*; and therefore that an entry which hath no other force than ſuch as is implied by the law, in every treſpaſs whatſoever, is not within theſe ſtatutes. 1 *Haw.* 145.

As to the matter of *violence*; it ſeems to be agreed, that an entry may be forcible, not only in reſpect of a violence actually done to the perſon of a man, as by beating him if he refuſe to relinquiſh his poſſeſſion, but alſo in reſpect of any other kind of violence in the manner of the entry, as by breaking open the doors of a houſe, whether any perſon be in it or not, eſpecially if it be a dwelling houſe, and perhaps alſo by any act of outrage after the entry, as by carrying away the party's goods; but it ſeems that an entry is not forcible, by the bare drawing up a latch, or pulling back the bolt of the door, there being no appearance therein of being done by *ſtrong hand*, or *multitude of people*; and it hath been holden, that an entry into a houſe thro' a window, or by opening a door with a key, is not forcible. 1 *Haw.* 145.

In reſpect of the circumſtances of *terror*; it is to be obſerved, that wherever a man, either by his behaviour or ſpeech, at the time of his entry, gives thoſe who are in poſſeſſion juſt cauſe to fear, that he will do them ſome bodily hurt, if they will not give way to him, his entry is eſteem-

ed forcible, whether he cauſe ſuch a terror, by carrying with him ſuch an unuſual number of attendants, or by arming himſelf in ſuch a manner, as plainly intimates a deſign, or by actually threatning to kill, maim, or beat thoſe who ſhall continue in poſſeſſion, or by giving out ſuch ſpeeches as plainly imply a purpoſe of uſing force, as if one ſay that he will keep his poſſeſſion in ſpite of all men, or the like. 1 *Haw.* 145.

But it ſeems that no entry ſhall be judged forcible, from any threatning to ſpoil another's *goods*, or to deſtroy his cattle, or to do him any other ſuch like damage, which is not perſonal. 1 *Haw.* 146.

However it is clear, that it may be committed by a ſingle perſon, as well as by twenty. 1 *Haw.* 146.

But nevertheleſs all thoſe who accompany a man, when he makes a forcible entry, ſhall be judged to enter with him, whether they actually come upon the lands or not. 1 *Haw.* 144.

II. What is a forcible detainer.

It ſeemeth certain, that the ſame circumſtances of violence or terror which will make an entry forcible, will make a detainer forcible alſo. And a detainer may be forcible, whether the entry were forcible or not. 1 *Haw.* 146.

III. How they are puniſhable by action at law.

If any perſon be put out or diſſeiſed of any lands or tenements in forcible manner, or put out peaceably, and after holden out with ſtrong hand; the party grieved ſhall have aſſize of noval diſſeiſin, or a writ of treſpaſs againſt the diſſeiſor; and if he recovers, he ſhall have treble damages, and the defendant moreover ſhall make fine and ranſom to the king. 8 H. 6. c. 9. ſ. 6.

The party grieved ſhall have aſſize, &c.] But this action, being at the ſuit of the party, and only for the right, is only where the entry of the defendant was not lawful; for if a man entereth with force, where his entry is lawful, he ſhall not be puniſhed by way of action; but yet he may be indicted upon the ſtatute, for the indictment is for the force, and for the king, and he ſhall make fine to the king, although his right is never ſo good. *Dalt.* c. 129.

Treble damages] And this he ſhall recover, as well for the mean occupation, as for the firſt entry: And albeit he ſhall recover treble damages, yet he ſhall recover coſts, which ſhall be trebled alſo; for the word *damages* includeth coſts of ſuit. 1 *Inſt.* 257.

IV. How puniſhable at the general ſeſſions.

The party grieved, if he will loſe the benefit of his treble damages and coſts, may be aided and have the aſſiſtance of the juſtices at the general ſeſſions, by way of indictment (A) on the ſtatute of 8 *H.* 6. Which being found there, he ſhall be reſtored to his poſſeſſion, by a writ of reſtitution granted out of the ſame court to the ſheriff. *Dalt. c.* 129.

In the caption of which indictment, it will be ſufficient to ſay, *juſtices aſſigned to keep the peace of our lord the king*, without ſhewing that they have authority to hear and determine felonies and treſpaſſes; for the ſtatute enables all juſtices of the peace, as ſuch, to take ſuch indictments. 1 *Haw.* 147.

And the tenement in which the force was made, muſt be deſcribed with convenient certainty; and muſt ſet forth that the defendant actually entred; and ouſted the party grieved; and continueth his poſſeſſion at the time of finding the indictment; otherwiſe he cannot have reſtitution, becauſe it doth not appear that he needeth it. 1 *Haw.* 147, 149, 150.

But if a man's wife, children, or ſervants do continue in the houſe or upon the land, he is not ouſted of his poſſeſſion; but his cattle being upon the ground, do not preſerve his poſſeſſion. *Dalt. c.* 132.

An indictment for forcible entry was quaſhed, for not ſetting forth, that the party was ſeiſed or diſſeiſed, or what eſtate he had in the tenement; for if he had only a term for years, then the entry muſt be laid, into the freehold of *A.* in the poſſeſſion of *B.* 3 Salk. 169.

V. How puniſhable by one juſtice.

1. For a more ſpeedy remedy, the party grieved may complain to any one juſtice; or to a mayor, ſheriff, or bailiff, within their liberties. 8 *H.* 6. *c.* 9.

2. But altho' one juſtice alone may proceed in ſuch caſes, yet it may be adviſeable for him, if the time for viewing

the force will ſuffer it, to take to his aſſiſtance one or two more juſtices.

3. Concerning which power of one juſtice, it is enacted as follows:

After complaint made to ſuch juſtice, by the party grieved, of a forcible entry made into lands, tenements, or other poſſeſſions, or forcible holding thereof, he ſhall within a convenient time, at the coſts of the party grieved (without any examining or ſtanding upon the right or title of either party) *take ſufficient power of the county, and go to the place where ſuch force is made.* 15 R. 2. c. 2. 8 H. 6. c. 9. ſ. 2. Dalt. c. 44.

Complaint——by the party grieved] Yet theſe words do not inforce any neceſſity of ſuch a complaint; for it is holden, that the juſtice may and ought to proceed, upon any information or knowledge thereof whatſoever, tho' no complaint at all be brought unto him, by any party grieved thereby. *Lamb.* 147.

Power of the county] All people of the county, as well the ſheriffs as other, ſhall be attendant on the juſtices, to arreſt the offenders; on pain of impriſonment and fine to the king. 15 *R.* 2. *c.* 2.

4. And if the doors be ſhut, and they within the houſe ſhall deny the juſtice to enter, it ſeems he may break open the houſe, to remove the force. *Dalt. c.* 44.

5. And if after ſuch entry made the juſtice *ſhall find ſuch force; he ſhall cauſe the offenders to be arreſted.* 15 R. 2. c. 2. 8 H. 6. c. 9. ſ. 2.

6. He ſhall alſo take away their weapons and armour, and cauſe them to be appraiſed, and after to be anſwered to the king as forfeited, or the value thereof. *Dalt. c.* 44.

7. Alſo ſuch juſtice ought to *make a record* (B) *of ſuch force by him viewed*; which record ſhall be a ſufficient conviction of the offenders, and the parties ſhall not be allowed to traverſe it: And this record, being made out of the ſeſſions, by a particular juſtice, may be kept by him; or he may make it indented, and certify the one part into the king's bench, or leave it with the clerk of the peace; and the other part he may keep himſelf. For this view of the force by the juſtice, being a judge of record, maketh his record thereof in the judgment of the law, as ſtrong and effectual, as if the offenders had confeſſed the force before him; and touching the reſtraining of traverſe, more effectual, than if the force had been found by a jury, upon the evidence

evidence of others. (That is, as to the fine and imprisonment, but not as to restitution.) 15 *R.* 2. *c.* 2. *Dalt. c.* 44.

8. And the offenders, being arrested (as before is said), *shall be put in the next gaol* (C) *there to abide convict by the record of the same justice, until they have made fine and ransom to the king.* 15 R. 2. c. 2.

Shall be put in the next gaol] It is said, that the justice hath no power to commit the offender to gaol, unless he do it upon his own view of the fact, and not upon the jury finding the same afterwards. *Dalt. c.* 44. 1 *Haw.* 142.

And if such offenders, being in the house at the coming of the justice, shall make no resistance, nor make shew of any force, then the justice cannot arrest or remove them at all upon such view. *Dalt. c.* 44.

But howsoever, if the force be found afterwards, by the inquiry of the jury, the justice may bind the offenders to the peace; and if they be gone, he may make his warrant to take them, and may after send them to the gaol, until they have found sureties for the peace. *Dalt. c.* 44.

Note; Mr. *Dalton*, in this place says, *good behaviour*, which I have presumed to alter to *the peace*, as deeming it much the safer; and not being sufficiently satisfied concerning the power of a justice of the peace to bind to the good behaviour in the like cases, which power Mr. *Dalton* hath enlarged more than all other authors, without any assistance from the commission of the peace, or any act of parliament, other than had been for above 200 years before.

Until they have made fine] *H.* 1 *G.* 2. *K.* and Sir *Edm. Ellewel.* He was brought up upon a *habeas corpus*, with a return of the cause of his commitment, which was upon a conviction of forcible entry and detainer. And it being moved to discharge him upon exceptions to the commitment, the court refused to enter into the consideration of them, till the convicton was likewise regularly removed before them. But by consent he was bailed in the mean time. And this term the conviction being before the court, it appeared that there was no fine set by the justices, and it was therefore moved to be quashed. It was agreed on both sides, that there should be a fine; but it was insisted, that it being now before the king's bench by a certiorari, they might set the fine. But by the court, We are not to execute the judgment of an inferior court. The conviction it to be upon view, and they who view the nature of the

force are the propereſt judges what fine to ſet; and though a certiorari ſhould come before the fine is ſet, yet it would be no contempt in the juſtices to compleat their judgment by ſetting one. *Lambard* indeed was of opinion, that the juſtices could not ſet the fine at all; but upon what foundation we can never imagine. The juſtices are not bound to do it upon the ſpot, but may take a reaſonable time to conſider of the fine; becauſe by the words of the act, the commitment is to be, till he has paid the fine. The conviction muſt be quaſhed, and the defendant diſcharged. *Str.* 794. L. *Raym.* 1515. *Seſſ. C. V.* 1. 289.

And the ſame was likewiſe ſolemnly reſolved in *Leighton*'s caſe; and that the juſtice may aſſeſs the ſame, either before the commitment or after. 1 *Haw.* 142.

And the fine muſt be aſſeſſed upon every offender ſeverally, and not upon them jointly; and the juſtice ought to eſtreat the fine, and to ſend the eſtreat into the exchequer, that from thence the ſheriff may be commanded to levy it for his majeſty's uſe. *Dalt. c.* 44.

But upon payment of the fine to the ſheriff, or upon ſureties found (by recognizance) for the payment thereof, it ſeemeth that the juſtice may deliver the offenders out of priſon again at his pleaſure. *Dalt. c.* 44.

9. And ſo much concerning removing the force: But the party ouſted cannot be reſtored to his poſſeſſion by the juſtice's view of the force; nor unleſs the ſame force be found by the inquiry of a jury.

Concerning which it is enacted as follows: *And tho' that the perſons making ſuch entry be preſent, or elſe departed before the coming of the juſtice; he may notwithſtanding in ſome good town next to the tenements ſo entered, or in ſome other convenient place by his diſcretion* (and that, tho' he go not to ſee the place where the force is; *Dalt. c.* 44.) *have power to enquire by the people of the county, as well of them that make ſuch forcible entry, as of them which hold the ſame with force.* 8 H. 6. c. 9. ſ. 3.

10. In order to which, *the juſtice ſhall make his precept* (D) *to the ſheriff, commanding him in the king's behalf, to cauſe to come before him, ſufficient and indifferent perſons, dwelling next about the lands ſo entered, to enquire of ſuch entries; whereof every man ſhall have lands or tenements of* 40 s. *a year, above reprizes. And the ſheriff ſhall return iſſues on every of them, at the day of the firſt precept returnable* 20 s. *and at the ſecond day* 40 s. *and at the third day* 100 s. *and at every day after double. And the ſheriff making default, ſhall on conviction before the ſame juſtice, or before the*

the judge of assize, forfeit 20 l. *half to the king, and half to him who shall sue, with costs; and moreover shall make fine and ransom.* 8 H. 6. c. 9. s. 4, 5.

Before the same justice] And the justice may proceed against the sheriff for this default, either by bail at the suit of the party, or by indictment at the suit of the king. *Dalt. c.* 44.

11. And the defendant also, if he is not present, ought to be called to answer for himself; for it is implied by natural justice in the construction of all laws, that no one ought to suffer any prejudice thereby, without having first an opportunity of defending himself. 1 *Haw.* 154.

12. And it seems to be settled at this day, that if the defendant tender a *traverse* of the force, the justice ought not to make any restitution, till the traverse be tried. 1 *Haw.* 154.

13. The defendant may also by the 31 *El. c.* 11. plead *three years possession*; whereby it is enacted, that *no restitution upon an indictment of forcible entry, or holding with force, shall be made, if the person indicted have had the occupation, or been in quiet possession for three years together next before the indictment found, and his estate therein not determined; and restitution shall stay till that be tried: and if it is found against the party indicted, he shall pay such costs and damages as the judges or justices shall assess; to be recovered as costs and damages in judgment or other actions.*

And it hath been holden that the plea of such possession is good, without shewing under what title, or of what estate such possession was; because it is not the title, but possession only, which is material in this case. 1 *Haw.* 152.

14. And it was holden by the court in *Leighton*'s case, that if the defendant shall either traverse the entry or the force, or plead that he has been three years in possession, the justice may summon a jury for the trial of such traverse, for it is impossible to determine it upon view; and if the justice have no power to try it, it would be easy for any one to elude the statute by the tender of such a traverse, and therefore by a necessary construction the justice must needs have this power as incidental to what is expresly given him. 1 *Haw.* 142.

15. And this traverse must be tendered in writing, and not by a bare denial of the fact in words; for thereupon a *venire facias* must be awarded, a jury returned, the issue tried, a verdict found, and judgment given, and costs and

damages awarded; and there must be a record, which must be in writing, to do all this, and not a verbal plea. *Dalt. c.* 133. 1 *Haw.* 154.

16. Upon which traverse tendred, the justice shall cause a new jury to be returned by the sheriff, to try the traverse; which may be done the next day, but not the same day. *Dalt. c.* 133.

17. And it seemeth, that he who tendereth the traverse, shall bear all the charges of the trial; and not the king, or the party prosecuting. *Dalt. c.* 133.

18. And *if such forcible entry or detainer be found* (E) *before such justice, then the said justice shall cause to reseise* (F) *the lands and tenements so entered or holden, and shall restore the party put out, to the full possession of the same.* 8 H. 6. c. 9. s. 3.

The said justice] It seems to be agreed, that no other justices of the peace, except those before whom the indictment shall be found, shall have any power either at the sessions or out of it, to make any award of restitution. 1 *Haw.* 152.

Shall cause to reseise] And the justice may break open the house by force, to reseise the same; and so may the sheriff do, having the justice's warrant. *Dalt. c.* 44.

Reseise] That is, shall remove the force, by putting out all such offenders as shall be found in the house, or upon the lands, that entered or held with force. *Dalt. c.* 130.

And shall restore the party put out] And this he may do in his own proper person; or he may make his warrant to the sheriff to do it. *Dalt. c.* 44. 1 *Haw.* 151, 2.

19. And by 21 *J. c.* 15. it is enacted, *that such judges, justices, or justice of the peace, as may give restitution unto tenants of any estate of freehold, may give the like unto tenants for term of years, tenants by copy of court roll, guardians by knight's service, tenants by* elegit, *statute merchant and staple, of lands or tenements by them so holden, which shall be entered upon by force, or holden from them by force.*

VI. How punishable on a certiorari.

Although regularly the justices only who were present at the inquiry, and when the indictment was found, ought to award restitution; yet if the record of the presentment or indictment shall be certified by the justice or justices into the king's bench, or the same presentment or indictment be removed and certified thither by certiorari, the justices

juſtices of that court may award a writ of reſtitution to the ſheriff, to reſtore poſſeſſion to the party expelled; for the juſtices of the king's bench have a ſupreme authority in all caſes of the crown. *Dalt. c.* 44.

Alſo where upon a removal of the proceedings into the king's bench the conviction ſhall be quaſhed, the court will order reſtitution to the party injured. As in the caſe of *K.* and *Jones*, *M.* 8 *G.* A conviction of forcible entry was quaſhed for the old exception of *meſſuage* or *tenement*, by reaſon of the uncertainty; but the reſtitution was oppoſed, on an affidavit that the party's title (which was by leaſe) was expired ſince the conviction. But the court ſaid, they had no diſcretionary power in this caſe, but were bound to award reſtitution on quaſhing the conviction. *Str.* 474.

VII. How puniſhable as a riot.

If a forcible entry or detainer ſhall be made by three perſons or more, it is alſo a riot, and may be proceeded again as ſuch, if no inquiry hath before been made of the force. *Dalt. c.* 44.

A. Indictment for a forcible entry and detainer at common law.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, that* A. O. *late of* ——— *in the county aforeſaid, gentleman, and* B. O. *late of the ſame, yeoman, together with divers other malefactors and diſturbers of the peace of our ſaid lord the king (whoſe names to the jurors aforeſaid are yet unknown) on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *with force and arms, at* ——— *aforeſaid, in the county aforeſaid, unlawfully and injuriouſly did enter into a certain barn and a certain orchard, then and there being in the poſſeſſion of one* A. I. *and that the ſaid* A. O. *and* B. O. *together with the ſaid other malefactors, then and there, with force and arms, unlawfully and injuriouſly did expel, amove, and put out the ſaid* A. I. *from the poſſeſſion of the ſaid barn and orchard, and the ſaid* A. I. *ſo as aforeſaid expelled, amoved, and put out from the poſſeſſion of the ſaid barn and orchard, then and there, with force and arms, unlawfully and injuriouſly did keep out, and ſtill do keep out, to the great damage of him the ſaid* A. I. *and againſt the peace of our ſaid lord the king, his crown and dignity.*

Indictment

Indictment on the ſtatute.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, that* A. I. *late of the pariſh of* ——— *in the county aforeſaid, gentleman, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *was poſſeſſed of a certain meſſuage, with the appurtenances, ſituate, lying, and being in* ——— *in the pariſh aforeſaid, in the county aforeſaid, for a certain term of years, then and ſtill to come, and unexpired, and being ſo poſſeſſed thereof, one* A. O. *late of* ——— *in the ſaid county, yeoman, afterwards, to wit, the ſaid* ——— *day of* ——— *in the year aforeſaid, into the ſame meſſuage, with the appurtenances aforeſaid, in* ——— *aforeſaid, in the pariſh and county aforeſaid, with force and arms, and with ſtrong hand, unlawfully did enter, and the ſaid* A. I. *from the peaceable poſſeſſion of the ſaid meſſuage, with the appurtenances aforeſaid, then and there with force and arms, and with ſtrong hand, unlawfully did expel and put out, and the ſaid* A. I. *from the poſſeſſion thereof, ſo as aforeſaid, with force and arms, and with ſtrong hand, being unlawfully expelled and put out, the ſaid* A. O. *him the ſaid* A. I. *from the aforeſaid* ——— *day of* ——— *in the year aforeſaid, until the day of the taking this inquiſition, from the poſſeſſion of the ſaid meſſuage, with the appurtenances aforeſaid, with force and arms, and with ſtrong hand, unlawfully and injuriouſly then and there did keep out, and ſtill doth keep out, to the great damage of the ſaid* A. I. *againſt the peace of our ſaid lord the king, and againſt the form of the ſtatutes in that caſe made and provided.*

Note; If it is a freehold, then the party muſt be ſaid to be *ſeiſed* thereof in his demeſne as of fee; and conſequently he muſt be thereof *diſſeiſed:* otherwiſe if it is of a leſſer eſtate, of which he is not properly ſaid to be *ſeiſed*, but poſſeſſed thereof at the will of the lord, according to the cuſtom of the manor, or the like, and then he muſt be *expelled, ejected, amoved*, or the like.

B. Record of a forcible detainer upon view.

Note; The books upon the office of a juſtice of the peace do generally ſet forth, that the record ought to be

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In the preſent tenſe, and not in the time paſt (and herewith do accord the adjudged caſes in the court of king's bench, *Str.* 443.); yet nevertheleſs they do all exhibit the form of a record in the time paſt, and not in the preſent: Therefore I have taken the liberty to alter the ſame, from the record in L. *Raymond* of the conviction of Sir *Edm. Elwell* aforeſaid, and others; adding the fine thereunto, for the want of which that conviction was quaſhed. And I have given the form of a record of a forcible *detainer*, rather than of a forcible *entry*, becauſe the juſtice for the moſt part cannot be ſuppoſed to be preſent at the entry, as not having knowledge thereof until after the entry is made.

Kent, to wit. BE *it remembred, that on the* 15*th day of* Sep. *in the firſt year of the reign of our ſovereign lord* George *the ſecond of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth, at* Beckingham *in the county of* Kent, *aforeſaid,* Eliz. Elwell, *complained to us Sir* E. Bettenſon, *baronet,* P. Burrel, *and* W. Paſſenger, *eſquires, three of the juſtices of our ſaid lord the king aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes and other miſdemeanors in the ſaid county committed, that Sir* Edm. Elwell, *late of* London, *baronet,* Joſeph Billers, *late of* ——— *and* Daniel Monty, *late of* —— *into the meſſuage of her the ſaid* E. E. *being the manſion houſe of her the ſaid* E. E. *called* Langley houſe, *ſituate within the pariſh of* Beckingham *aforeſaid, did enter, and her the ſaid* E. E. *of the meſſuage aforeſaid, whereof the ſaid* E. E. *at the time of the entry aforeſaid, was ſeiſed as of the freehold of her the ſaid* E. E *for the term of her life, unlawfully ejected, expelled, and amoved, and the ſaid meſſuage from her the ſaid* El. E. *unlawfully, with ſtrong hand and armed power, do yet hold and from her detain, againſt the form of the ſtatute in ſuch caſe made and provided; whereupon the ſame* El. E. *then, to wit, on the ſaid* 15*th day of* Sep. *at the pariſh of* B. *aforeſaid, prayeth of us, ſo as aforeſaid being juſtices, to her in this behalf that a due remedy be provided, according to the form of the ſtatute aforeſaid: Which complaint and prayer by us the aforeſaid juſtices being heard, we the aforeſaid* E. B. *barronet,* P. B. *and* W. P. *eſquires, juſtices aforeſaid, to the meſſuages aforeſaid perſonally have come, and do then and there find and ſee the aforeſaid* Edm. E. J. B. *and* D M. *the aforeſaid meſſuage, with force and arms, unlawfully, with ſtrong hand and armed power, detaining, againſt the form of the ſtatute in ſuch caſe made and provided, accord-*

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ing as ſhe the ſame El. E. *ſo as aforeſaid hath unto us complained: Therefore it is conſidered by us the aforeſaid juſtices, that the aforeſaid* Edmund Elwell, Joſeph Billers *and* Daniel Monty, *of the detaining aforeſaid with ſtrong hand, by our own proper view then and there as is aforeſaid had, are convicted, and every of them is convicted, according to the form of the ſtatute aforeſaid; Whereupon we the juſtices aforeſaid, upon every of the aforeſaid* Ed. E. J. B. *and* D. M. *do ſet and impoſe ſeverally a fine of* 10l. *of good and lawful money of* Great Britain, *to be paid by them and every of them ſeverally to our ſaid ſoverign lord the king, for the ſaid offences; and do cauſe them, and every of them, then and there to be arreſted; and the ſame* Ed. E. J. B. *and* D. M. *being convicted, and every of them being convicted upon our own proper view, of the detaining aforeſaid, with ſtrong hand as is aforeſaid, by us the aforeſaid juſtices are committed, and every of them is committed, to the gaol of our ſaid lord the king, at* Maidſtone, *in the county of* Kent *aforeſaid, being the next gaol to the meſſuage aforeſaid, there to abide reſpectively, until they ſhall have paid there ſeveral fines reſpectively, to our ſaid lord the king, for their reſpective offences aforeſaid. Concerning which the premiſſes aforeſaid, we do make this our record. In witneſs whereof, we the aforeſaid* E. B. *baronet,* P. B. *and* W. P. *eſquires, the juſtices aforeſaid, to this record our hands and ſeals do ſet, at the pariſh of* B. *aforeſaid, in the county of* Kent *aforeſaid, on the* 15*th day of* Sep. *in the firſt year aforeſaid of the reign of our ſaid ſoverign lord the now king.*

C. Mittimus for forcible detainer.

Weſtmorland. EDWARD Haſſel, *eſquire, one of the juſtices of our ſovereign lord the king's majeſty, aſſigned to keep the peace within the ſaid county of* W. *and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed; To the keeper of his majeſty's gaol at* ——— *in the ſaid county, and to his deputy and deputies there, and to every of them, greeting: Whereas upon complaint made unto me this preſent day, by* A. I. *of* ——— *in the ſaid county, yeoman, I went immediately to the dwelling houſe of the ſaid* A. I. *at* ——— *aforeſaid in the ſaid county, and there found* A. O. *late of* ——— *labourer,* B. O. *late of the ſame, weaver, and* C. O. *late of* ——— *butcher, forcibly with ſtrong hand and armed power, holding the ſaid houſe, againſt the peace of our ſaid*

lord the king, and againſt the form of the ſtatute in ſuch caſe made and provided: Therefore I ſend you, by the bringers hereof, the bodies of the ſaid A. O. B. O. *and* C. O. *convicted of the ſaid forcible holding, by mine own view, teſtimony and record; commanding you in his ſaid majeſty's name to receive them into your ſaid gaol, and there ſafely to keep them, and every of them reſpectively, until they ſhall have reſpectively paid the ſeveral ſum of* 10 l. *of good and lawful money of* Great Britain, *to our ſaid ſovereign lord the king, which I have ſet and impoſed upon every of them ſeparately, for a fine and ranſom for their ſaid treſpaſſes reſpectively. Herein fail you not, at the peril that may follow thereof. Given at* —— *aforeſaid, in the county aforeſaid, under my ſeal, the* —— *day of* —— *in the* —— *year of the reign of our ſaid ſovereign lord king* George *the third.*

Note; By the forms in all the books, all the offenders ſtand committed until all have paid, ſo as that the firſt ſhall not be diſcharged on payment of his own fine, but continue until all the reſt have paid likewiſe; which ſeems unreaſonable, and is not warranted by the ſtatute.

D. Precept to the ſheriff to return a jury.

Weſtmorland. HENRY Aglionby, *eſquire, one of the juſtices of our lord the king, aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed; To the ſheriff of the ſaid county, greeting: On behalf of our ſaid lord the king, I command you, that you cauſe to come before me at* —— *in the county aforeſaid, on the* —— *day of* —— *next enſuing, twenty-four ſufficient and indifferent men, of the neighbourhood of* —— *aforeſaid, in the county aforeſaid, every of whom ſhall have lands or tenements of* 40 s. *yearly at the leaſt, above reprizes, to inquire upon their oaths for our ſaid lord the king, of a certain entry made with ſtrong hand (as it is ſaid) into the meſſuage of one* A. I. *at* —— *aforeſaid, in the county aforeſaid, againſt the form of the ſtatute in ſuch caſe made and provided. And you are to return upon every of the jurors by you in this behalf to be impanelled,* 20 s. *of iſſues at the aforeſaid day. And have you then there this precept. And this you ſhall in no wiſe omit, upon the peril that ſhall thereof enſue. Witneſs the ſaid* H. A. *at* —— *in the county aforeſaid, the* —— *day of* —— *in the* —— *year of the reign of* ——.

Th:

The jurors oath.

YOY *shall true inquiry and presentment make of all such things as shall come before you, concerning a forcible entry* [or *detainer*] *said to have been lately committed in the dwelling house of*———*yeoman, at*———*in this county; you shall spare no one for favour or affection, nor grieve any one for hatred or ill-will, but proceed herein according to the best of your knowledge, and according to the evidence that shall be given to you: So help you god.*

The oath that A. F. *your foreman hath taken on his part, you and every of you shall truly observe, and keep on your parts: So help you gold.*

E. The inquisition, indictment, or finding of the jury.

Westmorland. AN *inquisition for our sovereign lord the king, indented and taken at*———*in the said county, the*———*day of*———*in the*———*year of the reign of*———*by the oaths of*———*good and lawful men of the said county, before* J. P. *esquire, one of the justices of our said lord the king, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the same county committed, who say upon their oaths aforesaid, that* A. I. *of*———*aforesaid, yeoman, long since lawfully and peaceably was seised in his demesne as of fee* [if it is not freehold, then say, *possessed*] *of and in one messuage, with the appurtenances, in*———*aforesaid, in the county aforesaid, and his said possession* [*and seisin*] *so continued until* A. O. *late of*——— *yeoman,* B. O. *late of the same, yeoman, and* C. O. *late of the same, yeoman, and other malefactors unknown, the*———*day of*———*now last past, with strong hand and armed power, into the messuage aforesaid, with the appurtenances aforesaid, did enter, and him the said* A. I. *thereof disseised, and with strong hand expelled; and him the said* A. I. *so disseised and expelled from the said messuage with the appurtenances aforesaid, from the said*———*day of*——— *until the day of the taking of this inquisition, with like strong hand and armed power did keep out, and do yet keep out, to the great disturbance of the peace of our said lord the king, and against the form of the statute in such case made and provided.*

We

We whoſe names are hereunto ſet, being the jurors aboveſaid, do upon the evidences now produced before us, find the inquiſition aforeſaid true.

A. B.
C. D. &c.

F. Warrant to the ſheriff for reſtitution.

Weſtmorland. HENRY Fletcher, *eſquire, one of the juſtices of our ſovereign lord the king, aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed; To the ſheriff of the ſaid county, greeting: Whereas by an inquiſition taken before me the juſtice aforeſaid, at* ——— *in the county aforeſaid, on this preſent* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *upon the oaths of* ——— *and by virtue of the ſtatutes made and provided in caſes of forcible entry and detainer, it is found, that* A. O. *late of* ——— *yeoman, and* B. O. *late of* ——— *yeoman, on the* ——— *day of* ——— *now laſt paſt, into a certain meſſuage, with the appurtenances, of* A. I. *of* ——— *aforeſaid, in the county aforeſaid, gentleman, ſituate, lying, and being at* ——— *aforeſaid, in the county aforeſaid, with force and arms did enter, and him the ſaid* A. I. *thereof then with ſtrong hand did diſſeiſe and drive out, and him the ſaid* A. I. *thus driven out from the aforeſaid meſſuage, with the appurtenances, from the* ——— *day of* ——— *aforeſaid, to this preſent day of the taking of the ſaid inquiſiton, with ſtrong hand and armed force did keep out, and do yet keep out, as by the inquiſition aforeſaid more fully appeareth of record: Therefore on the behalf of our ſaid ſovereign lord the king, I charge and command you, that taking with you the power of the county (if it be needful) you go to the ſaid meſſuage and other the premiſſes, and the ſame with the appurtenances you cauſe to be reſeiſed, and that you cauſe the ſaid* A. I. *to be reſtored and put into his full poſſeſſion thereof, according as he, before the entry aforeſaid was ſeiſed, according to the form of the ſaid ſtatutes. And this you ſhall in no wiſe omit, on the penalty thereon incumbent. Given under my hand and ſeal at* ——— *in the ſaid county, the* ——— *day of* ——— *in the* ——— *year of the reign of* ———

Foreign ſervice.

Artificers.

1. BY the 5 *G. c.* 27. If any perſon ſhall contract with, entice, to endeavour to perſuade any manufacturer or artificer in wool, iron, ſteel, braſs, or any other metal, clockmaker, watchmaker, or any other artificer or manufacturer, to go out of this kingdom, into any foreign country out of his majeſty's dominions, and ſhall (on proſecution in 12 months) be convicted thereof on indictment or information, in the courts at *Weſtminſter*, aſſizes or ſeſſions of the county where the offence ſhall be committed; he ſhall for the firſt offence be fined not exceeding 100l. and be impriſoned for three months, and until the fine be paid; for the ſecond offence, ſhall be fined at the diſcretion of the court, and be impriſoned 12 months, and till the fine is paid. *ſ.* 1, 2.

And if any ſubject, being ſuch artificer or manufacturer, ſhall go into any country out of his majeſty's dominions, to exerciſe or teach any the ſaid manufactories to foreigners, or if any ſubject who ſhall be in any ſuch foreign country, and there exerciſe any the ſaid manufactories, ſhall not return in ſix months next after warning be given him, by the ambaſſador, miniſter, or conſul, or perſon authorized by him, or by a ſecretary of ſtate, and from thenceforth continually inhabit within this realm; he ſhall be incapable of any legacy, or of being executor, or adminiſtrator, and of taking any lands, by deſcent, deviſe, or purchaſe, and forfeit his lands and goods, and be deemed an alien, and out of the king's protection. *ſ.* 3.

And on complaint on oath before a juſtice, that any perſon is endeavouring to ſeduce or draw away any ſuch manufacturer or artificer, or that he hath contracted or is preparing to go out of the kingdom; he may iſſue his warrant to bring ſuch perſon before him or ſome other juſtice; and if it ſhall appear to ſuch juſtice by confeſſion, or the oath of one witneſs, that ſuch perſon was guilty of any the ſaid offences, he may bind him over to the next aſſizes or ſeſſions, to anſwer the premiſſes; and if he ſhall upon indictment be there convicted of any ſuch promiſe or contract, or preparation to go abroad beyond the ſeas, he ſhall give ſuch ſecurity, not to depart out of the realm, as ſuch court ſhall think reaſonable, and be impriſoned until ſuch ſecurity be given. *ſ.* 4.

And

And by the 23 G. 2. *c.* 13. If any perſon ſhall contract with, or endeavour to perſuade or ſeduce any artificer in the manufactures of *Great Britain*, to go into any foreign country, not belonging to the crown of *Great Britain*; and ſhall be thereof convicted, in twelve months, in the king's bench, or at the aſſizes; he ſhall for every ſuch perſon forfeit 500 l. and be impriſoned in the common gaol for twelve months, and till payment of the forfeiture; and for a ſecond or other ſubſequent offence, ſhall forfeit 1000 l. and be impriſoned two years, and till payment. *ſ.* 1, 2.

And if any perſon ſhall put on board any veſſel not bound directly to ſome of the *Britiſh* dominions, any tools or utenſils, or part thereof proper for either the woollen or ſilk manufactures; he ſhall forfeit the ſame and 200 l. *id. ſ.* 3.

And any officer of the cuſtoms may ſeize, and ſecure in ſome of the king's warehouſes, all ſuch tools and utenſils as ſhall be found on board any ſuch veſſel; and the ſame, after condemnation, ſhall be publickly ſold. *id. ſ.* 4.

And if the maſter or captain ſhall knowingly permit any the ſaid tools or utenſils to be put on board his ſhip; he ſhall forfeit 100 l. and if it is a king's ſhip he ſhall alſo forfeit his office, and be incapable of any office under the crown. *id. ſ.* 5.

And if any officer of the cuſtoms ſhall take any entry outward or ſign any ſufferance for ſhipping or exporting any the ſaid tools, or knowingly permit the ſame to be done; he ſhall forfeit 100 l. and his office, and be incapable of any office under the crown. *id. ſ.* 6.

All which ſaid penalties, on this act ſhall be half to the king, and half to him that ſhall proſecute. *id. ſ.* 7.

2. If any ſubject ſhall inliſt or enter himſelf, or ſhall engage to go beyond the ſeas or embark with intent to inliſt and enter himſelf, altho' no inliſting money be actually paid to him; or if any perſon ſhall procure any ſubject to enliſt or enter himſelf, or hire or retain any ſubject, with intent to cauſe him to inliſt or enter himſelf, or retain, engage, or procure any ſubject (tho' no inliſting money be paid) to go beyond the ſeas or imbark with intent and in order to be inliſted to ſerve any foreign prince, ſtate or potentate, as a ſoldier, without his majeſty's leave; he ſhall be guilty of felony with- Soldiers.

out benefit of clergy. 9 *G.* 2. *c.* 30. *ſ.* 1. 29 *G.* 2. *c.* 17. *ſ.* 4.

And offences committed out of the realm may be tried in any county in *England.* 9 *G.* 2. *c.* 30. *ſ.* 2.

But if any perſon ſo inliſted, or inticed to go beyond the ſeas in order to be inliſted, as a non-commiſſion officer or private ſolder, in any foreign ſervice, ſhall in fourteen days voluntarily diſcover upon oath, before any juſtice or other civil magiſtrate, the perſon by whom he was inliſted or enticed, ſo as he be convicted, he ſhall be indemnified. *ſ.* 3.

Foreſtalling, ingroſſing, and regrating.

Derivation.

Foreſtalling (foreſtællan, or foreſtallan) in the Engliſh, Saxon ſignifieth properly to *market before the publick*, or to *prevent the publick market*; and metaphorically, to *intercept* in general: and ſeemeth derived from *fore*, which is the ſame as *before*, and *ſtalle* a ſtanding place or department; from whence ſprang the antient word *ſtallage*, which ſignifieth money paid for erecting a ſtall or ſtand, for the ſelling of goods in a fair or market:

Ingroſſing is from *in*, and *groſs*, great or whole:

And *regrating*, from *re*, again, and the *French grater*, to *grate* or ſcrape; and ſignifieth the ſcraping or dreſſing of cloth or other goods, in order for ſelling the ſame again.

I ſhall treat, firſt, concerning theſe offences at the common law; and, ſecondly, concerning the ſame by ſtatute.

I. Concerning theſe offences at common law.

Theſe offences at common law.

1. At the common law, all endeavours whatſoever to enhance the common price of any merchandize, and all kinds of practices which have an apparent tendency thereto whether by ſpreading falſe rumours, or by buying things in a market before the accuſtomed hour, or by buying and ſelling again the ſame thing in the ſame market, or by any other ſuch like devices, are highly criminal

minal and puniſhable by fine and impriſonment. 1 *Haw.* 234, 5.

2. By the common law, a merchant bringing victuals into the realm, may ſell the ſame in groſs; but no perſon can lawfully buy within the realm any merchandize in groſs, and ſell the ſame in groſs again, without being liable to be indicted for the ſame. 3 *Inſt.* 196.

3. And the bare ingroſſing of a whole commodity, with an intent to ſell it at an unreaſonable price, is an offence indictable at common law, whether any part thereof be ſold by the ingroſſer or not. 1 *Haw.* 235.

4. And ſo jealous is the common law of all practices of this kind, that it will not ſuffer corn to be ſold in the ſheaf; perhaps for this reaſon, becauſe by ſuch means the market is in effect foreſtalled. 1 *Haw.* 235.

5. Anciently the ingroſſer and regrator were comprehended under the word foreſtaller; but now they are diſtinguiſhed by the following ſtatute.

II. Concerning theſe offences by ſtatute.

By ſtatute:

Foreſtalling, what.

1. *Whoſoever ſhall buy or cauſe to be bought, any merchandize, victual, or any other thing whatſoever, coming by land or by water toward any market or fair, to be ſold in the ſame, or coming toward any city, port, haven, creek, or road, from any parts beyond the ſea to be ſold; or make any bargain, contract or promiſe, for the having or buying the ſame, or any part thereof ſo coming as is aforeſaid, before the ſaid merchandize, victuals, or other things ſhall be in the market, fair, city, port, haven, creek or road, ready to be ſold; or ſhall make any motion by word, letter, meſſage, or otherwiſe, to any perſon for the inhancing of the price, or dearer ſelling of any thing abovementioned; or elſe diſſuade, move, or ſtir any perſon coming to the market or fair, to abſtain or forbear to bring or convey any of the things above rehearſed, to any market, fair, city, port, haven, creek, or road to be ſold, as aforeſaid, ——ſhall be deemed a foreſtaller.* (A) 5 & 6 Ed. 6. c. 14. ſ. 1.

Ingroſſing what.

2. *Whoſoever ſhall ingroſs, or get into his hands by buying, contracting, or promiſe-taking, other than by demiſe, grant, or leaſe of land or tythe, any corn growing in the fields, or any other corn or grain, butter, cheeſe, fiſh, or other dead victuals whatſoever, to the intent to ſell the ſame again, ſhall be deemed an unlawful ingroſſer.* (B) 5 & 6 Ed. 6. c. 14. ſ. 3.

And it is said not to be sufficient in an indictment or information, to say that the defendant bought so much goods, but the words of the statute are to be pursued, which are———*shall ingross or get into his hands by buying*. But it is not necessary to set forth, that the defendant did not come by it by a demise of land, or the like; but the defendant, if he have any such matter to alledge, must give it in evidence. 1 *Haw.* 237, 238.

Regrating, what.

3. *Whatsoever shall by any means regrate, obtain, or get into his hands or possession, in a fair or market, any corn, wine, fish, butter, cheese, candles, tallow, sheep, lambs, calves, swine, pigs, geese, capons, hens, chickens, pigeons, conies, or other dead victual whatsoever, that shall be brought to any fair or market to be sold, and do sell the same again in any fair or market holden or kept in the same place, or in any other fair or market within four miles thereof, shall be deemed a regrater.* (C) 5 & 6 Ed. 6. c. 14. s. 2.

Penalty.

4. And if any shall be guilty of any the said offences, he shall for the first offence be imprisoned two months, and forfeit the value of the goods; for the second offence, be imprisoned half a year, and forfeit double value; and for the third offence, shall be set on the pillory forfeit all his goods and be imprisoned during the king's pleasure. 5 & 6 *Ed.* 6. *c.* 14. *s.* 4, 5, 6.

Half the said forfeitures to go to the king, and half to him that will sue, in two years after the offence. *id. s.* 9, 14.

And the sessions may hear and determine the same, by inquisition, presentment, bill, or information, and by examination of two witnesses, and may make process thereupon, as though they were indicted; and estreat the king's moiety, and award execution of the other moiety for the party, by *fieri facias*, or *capias*, as the courts at *Westminster* may do: And if any conviction or attainder shall be at the king's suit only, then the whole forfeitures shall be estreated and levied to the king's use. *s.* 10.

Form of the indictment or information.

5. From hence it seems clearly to follow, as well as from the general rules of law, that no information for any of the said offences against the said statute can be good, without shewing in certain the quantity of the thing for which the penalty is supposed to be incurred, not only because otherwise the judgment to be given on such an information can never be pleaded in bar of any other, because it cannot appear that both of them were brought

brought for the ſame thing; but alſo becauſe it cannot appear to the court what forfeiture the defendant ought to incur, unleſs the extent of the offence be ſpecially ſet forth. 1 *Haw.* 238.

6. Provided, that the buying of any ſuch barley, bigg, or oats as any perſon (not foreſtalling) ſhall buy to convert into malt or oatmeal, in his own houſe, and ſo ſhall be converted indeed; or the buying of any ſuch thing by any ſuch fiſhmonger, butcher, or poulterer, as concerneth his own faculty, craft, or miſtery (otherwiſe than by foreſtalling) which ſhall ſell the ſame again upon reaſonable prices by retail; or the taking of any cattle, corn, grain, butter, cheeſe, or any other thing abovementioned, reſerved without fraud upon any leaſe for lives or years; or the buying of any wine or other dead victual above mentioned, being apt and meet for man's ſuſtenance, by any innholder or other victualler, to ſell the ſame by retail within his houſe, or to any of his neighbours for their ſuſtenance, for reaſonable prices; or the buying of any dried or ſalted fiſh, herring or ſprats (not foreſtalled) and ſold for reaſonable prices; or the buying of any corn, fiſh, butter or cheeſe, by any badger, lader, kidder, or carrier duly licenſed, who ſhall ſell or deliver in open fair or market, or to any other victualler, or to any other perſon, for the proviſion of his houſe, all ſuch corn, grain, butter and cheeſe as he ſhall buy or cauſe to be bought, and that within one month next after he ſhall ſo buy any ſuch corn, grain, butter or cheeſe, ſo that the ſame ſhall be bought without foreſtalling; or elſe that any common proviſion to be made without fraud by any perſon, of any the things aboveſaid, for any city, borough, or town corporate, or for proviſion of victualling of any ſhip, caſtle, or fort within the king's dominions, without foreſtalling, which ſhall be employed only to that uſe;——ſhall not be deemed an offence contrary to this act. 5 & 6 *Ed.* 6. *c.* 14. *ſ.* 7. Exceptions and limitations.

And if any perſon, having ſufficient corn and grain for the proviſion of his own houſe and ſowing of his grounds for one year, do buy any corn in any fair or market, for the change of his ſeed, and do not bring to the ſame fair or market the ſame day ſo much corn as he ſhall fortune to buy for his ſeed, and ſell the ſame if he can as the price of corn then goeth in the ſaid market or fair; every ſuch perſon ſo buying corn for ſeed, ſhall forfeit double the value of the corn ſo bought: to be levied and diſpoſed in manner aforeſaid. *ſ.* 8.

And if any perſon ſhall buy any oxen, ronts, ſteers, kine, heifers, calves, ſheep, lambs, goats, or kids living, and ſell the ſame again alive, unleſs he keep and feed the ſame for five weeks in his own houſe, ground, ferm-ground, or ſuch ground where he hath the herbage or common of paſture by grant or preſcription; he ſhall forfeit double the value of the cattle or things ſo bought and ſold again; to be levied and diſpoſed in manner aforeſaid, *ſ.* 9.

Provided, that it ſhall be lawful to perſons duly licenſed, to buy (otherwiſe than by foreſtalling) corn, grain, or cattle, to be tranſported or carried by water from any port or place within *England* or *Wales*, to any other port or place within the ſaid dominions, if he ſhall without fraud ſhip or embark within 40 days next after he ſhall have bought the ſame, or taken covenant or promiſe for the buying thereof; and with ſuch expedition and diligence as wind and weather will ſerve do carry and tranſport the ſame, to ſuch port or place as his cocket ſhall declare; and there do diſbark, unlade, and ſell the ſame; and bring a certificate thereof from a juſtice of the county, or mayor of the town corporate where the ſame ſhall be unladen, and alſo of the cuſtomer of the port where ſuch unlading ſhall be, of the place and day where the ſaid corn or cattle ſhall be diſbarked, unladen, and ſold, to be directed to the cuſtomer and comptroller of the port where the ſame were embarked. *ſ.* 12.

And provided, that it ſhall be lawful to any perſon dwelling within a mile of the main ſea, to buy all manner of fiſh, freſh or ſalted (not foreſtalling the ſame), and to ſell the ſame again at reaſonable prices. *ſ.* 15.

And provided, that licenſed drovers may buy cattle in ſuch counties where they have been wont to buy the ſame, at their free liberty and pleaſure; and to ſell the ſame, as is aforeſaid, at reaſonable prices in common fairs and markets diſtant from the place where they ſhall buy the ſame 40 miles at the leaſt: ſo that the ſame be not bought by way of foreſtalling. *ſ.* 16.

Alſo the ſaid act ſhall not extend to wines, oils, ſugars, ſpices, currans, nor other foreign victuals; fiſh and ſalt only excepted. 13 *El. c.* 25 *ſ.* 21.

And by the 15 *C.* 2. *c.* 7. When the quarter of wheat (*Wincheſter* meaſure) doth not exceed 48 s. rye 32 s. barley or malt 28 s. buck wheat 28 s. oats 13 s. 4 d. peaſe or beans 32 s. any perſon (not foreſtalling, nor ſelling the ſame again in the ſame market in three months) may buy

ſuch

ſuch corn, in open market, at or under ſuch price, and lay it up, and ſell the ſame again, without incurring any penalty. *ſ.* 4.

Alſo it hath been reſolved, that ſuch *victual* only as is neceſſary for the food of man, is within the aforeſaid ſtatute of 5 & 6 *Ed.* 6. and therefore that apples and cherries, and ſuch like fruit are not: but that ſalt is a victual within the meaning of it. 1 *Haw.* 237.

7. By 31 *El. c.* 5. which ordains that informations for offences againſt penal ſtatutes, muſt be laid in the proper county, it is provided, that nevertheleſs an information on the ſaid ſtatute of *Ed.* 6. againſt foreſtalling, ingroſſing, or regrating, where the penalty ſhall appear to be 20l. or above, may be laid out of the proper county, and in any other county at the pleaſure of the informer. Information may be laid in any county.

A. Indictment for foreſtalling.

Weſtmorland. THE *jurors for our lord the king, upon their oath preſent, that* A. O. *late of the pariſh of* ——— *in the county aforeſaid, yeoman, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *at the pariſh aforeſaid, in the county aforeſaid, did buy and cauſe to be bought of and from one* A. S. *twenty oxen, for the ſum of* 200l. *of lawful money of* Great Britain, *as he the ſaid* A. S. *then and there was driving the ſaid twenty oxen towards the market of* M. *to ſell the ſaid twenty oxen in the ſaid market, and before the ſaid twenty oxen were brought into the ſaid market, where the ſame ſhould be ſold; in contempt of our ſaid lord the king and his laws; to the evil example of all others in the like caſe offending, againſt the peace of our ſaid lord the king, his crown and dignity, and againſt the form of the ſtatute in that caſe made and provided.*

B. Indictment for ingroſſing.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, that* A. O. *late of* ——— *in the county aforeſaid, yeoman, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *at* ——— *aforeſaid, in the county aforeſaid, did ingroſs and get into his hands, by buying of and from one* A. S. 50 *quarters of wheat, to the intent to ſell the ſame again; to the evil example of all others in the like caſe offending, againſt the peace of our ſaid lord the king, his crown and dignity, and againſt the form of the ſtatute in that caſe made and provided.*

C. Indictment for regrating.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, that* A. O. *late of the pariſh of* ——— *in the county aforeſaid, yeoman, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *at the pariſh aforeſaid, in the county aforeſaid, to wit, in a certain market then and there holden, did buy, obtain, and get into his hands and poſſeſſion ten geeſe and twenty chickens, of and from one* A. S. *for the ſum of* 30s. *of lawful money of* Great Britain *(the ſaid geeſe and chickens then being brought to the ſaid market by the ſaid* A. S. *to be ſold); and that afterwards, to wit, on the ſame* ——— *day of* ——— *in the year aforeſaid, he the ſaid* A. O. *at the pariſh aforeſaid, in the county aforeſaid, in the ſaid market there, unlawfully did regrate the ſaid geeſe and chickens, and ſell the ſame again to one* A. B. *for the ſum of* 40s. *of like lawful money of* Great Britain, *in contempt of our ſaid lord the king and his laws, to the evil example of all others in the like caſe offending, againſt the peace of our ſaid lord the king, and againſt the form of the ſtatute in that caſe made and provided.*

Foreſts. See **Game.**

Forfeiture.

The forfeitures for particular offences may be found under their reſpective titles; here it is treated of forfeitures in general.

I. Of forfeiture of lands and goods.
II. Of loſs of dower.
III. Of corruption of blood.

I. Of

I. Of forfeiture of lands and goods.

1. IT ſeems agreed, that by the common law, all lands of inheritance, whereof the offender was ſeiſed in his own right, and alſo all rights of entry to lands in the hands of a wrong doer, are forfeited to the king, by an attainder of high treaſon, and to the lord of whom they are immediately holden, by an attainder of petit treaſon or felony. 2 *Haw.* 448. Forfeiture of lands.

But it ſeems clear, that the lord cannot enter into the lands holden of him, upon an eſcheat for petit treaſon or felony, without a ſpecial grant, till it appear by due proceſs, that the king hath had his prerogative of the year, day, and waſte. 2 *Haw.* 448.

Concerning which year, day and waſte, it is enacted by the 17 *Ed.* 2. *c.* 16. that the king ſhall have the goods of all felons attainted, and fugitives, whereſoever they be found. And if they have freehold, it ſhall be forthwith taken into the king's hands, and the king ſhall have all profits of the ſame by one year and one day; and the land ſhall be waſted and deſtroyed in the houſes, woods, and gardens, and in all manner of things, belonging to the ſame land. And after the king hath had the year, day, and waſte, the land ſhall be reſtored to the chief lord of the fee, unleſs that he fine before with the king, for the year, day, and waſte.

2. As to forfeiture of goods, it ſeems agreed, that all things whatſoever, which are comprehended under the notion of a perſonal eſtate, whether they be in action or poſſeſſion, which the party hath, or is intitled to, in his own right, and not as executor or adminiſtrator to another, are liable to ſuch forfeiture, in the following caſes: Forfeiture of goods.

(1) Upon a conviction of treaſon or felony. 2 *Haw.* 450.

(2) Upon a flight found before the coroner, upon view of a dead body. *id.*

(3) Upon an acquittal of a capital felony, if the party is found to have fled. *id.*

(4) Alſo a perſon indicted of petit larceny, and acquitted, yet if it be found he fled for it, forfeits his goods, as in caſe grand of larceny. 1 *H. H.* 530. 2 *Haw.* 451.

But it is certain that the party may in all caſes, except that of the coroner's inqueſt, traverſe the finding of the flight. Alſo it ſeems agreed, that the particulars of the goods found to be forfeited may be alſo traverſed. 2 *Haw.* 451.

(5) Upon

(5) Upon a preſentment by the oaths for 12 men that a perſon arreſted of treaſon or felony, fled from, or reſiſted thoſe who had him in cuſtody, and was killed by them in the purſuit or ſcuffle. 2 *Haw.* 451.

(6) By being waived or left by a felon in his flight, whereby he forfeits the goods ſo waived, whether they be his own, or the goods of others ſtolen by him, which ſhall not be reſtored to the right owners but upon a proper proſecution. 2 *Haw.* 451.

(7) Alſo, a convict within clergy, forfeits all his goods, tho' he be burnt in the hand; yet thereby he becomes capable of purchaſing other goods. 2 *H. H.* 388, 389.

But on burning in the hand, he ought to be immediately reſtored to poſſeſſion of his lands. 2 *H. H.* 389.

Forfeiture upon outlawry.

3. Upon outlawry in treaſon or felony, the offender ſhall loſe and forfeit as much as if he had appeared, and judgment had been given againſt him, as long as the outlawry is in force. *Wood. b.* 4. *c.* 5.

And thoſe that tarry till the exigent, in treaſon, felony, or petit larceny, forfeit their goods, though they render themſelves to juſtice, and are acquitted; for it was a flight in law. *Wood. b.* 4. *c.* 5.

Forfeiture in ſe defendendo.

4. But where the killing a man in his own defence is in the law no felony, there is no forfeiture, unleſs he fled; for that is a diſtinct forfeiture, although the party be not guilty of the fact. 1 *H. H.* 493.

To what time the forfeiture ſhall relate.

5. It ſeems agreed, that the forfeiture, upon an attainder either of treaſon or felony, ſhall have relation to the time of the offence, for the avoiding of all ſubſequent alienations of the *land*; but to the time of the conviction or flight found only, as to *chattels*; unleſs the party were killed in flying or reſiſting, in which caſe it is ſaid, that the forfeiture of the chattels ſhall relate to the time of the offence. 2 *Haw.* 454.

What is to be done with the felon's goods before forfeiture.

6. But though the goods of an offender be not forfeited, till the conviction, or flight found by inqueſt, yet whether they may be ſeized upon the offence committed, hath been controverted; concerning which lord *Hale* ſaith thus:

It ſeemeth clear, that at the common law, if a man had committed felony or treaſon, or tho' poſſibly he had committed none, yet if he had been indicted, the ſheriff, coroner or other officer, could not ſeize and carry away the goods of the offender or party accuſed:

Again, he could not in that caſe have removed the goods out of the cuſtody of the offender or party accuſed, and deliver

deliver them over to the conſtables or to the *villata*, to anſwer for them:

But if the party were indicted, the ſheriff or other officer might make a ſimple ſeizure of them only to inventory and appraiſe them, and leave them to the cuſtody of the ſervants or bailiff of the party indicted, in caſe he would give ſecurity againſt their being imbezilled, or in default thereof he might deliver them to the conſtable or vill to be anſwerable for them, but yet ſo that the party accuſed and his family have ſufficient out of them for their livelihood and maintenance.

And poſſibly the ſame law was, tho' he were not indicted, but *de facto* had committed a felony, but with this difference, if he had been indicted, this kind of ſeizure might have been made, whether he committed the felony or not.

But in caſe there were no indictment, then it is at the peril of him that ſeizeth, if he committed not the felony:

And then as to the ſtatute of 1 *R.* 3. *c.* 3. it is as follows; *No ſheriff or other perſon ſhall take or ſeize the goods of any perſon arreſted or impriſoned for ſuſpicion of felony, before he be convicted or attainted, or before the goods be otherwiſe forfeited; on pain of double value to the party grieved:*

Mr. *Stanford* thinks this is but in affirmance of the common law, only that it gives a penalty: but it ſeems to be ſomewhat more than ſo, for this prohibits the ſeizure of the goods of a party impriſoned, tho' he were alſo indicted, but not yet convicted, where unqueſtionably the common law allowed ſuch a ſeizure, if the party or his friends did not ſecure the forthcoming of the goods, where the party was indicted.

But upon this ſtatute theſe things are conſiderable; 1. As to perſons at large, it ſeems to me (ſays he) that if they fly not, there can be no ſeizure at all made, whether they are indicted or not; for the ſtatute did not intend a greater privilege to a party impriſoned, than to him that is at large. 2. That if he be at large, and *fly* for it, yet his goods cannot be ſeized and removed, whether he be indicted or not indicted. 3. That if he be indicted, and at large, yet the goods cannot be removed, but only viewed, appraiſed, and inventoried, in the houſe or place where they lie:

And yet I know not how it comes to paſs, ſays he, the uſe of ſeizing the goods of perſons accuſed of felony, tho' impriſoned or not impriſoned, hath ſo far obtained notwithſtanding this ſtatute, that it paſſeth for law and common practice, as well by conſtables, ſheriffs, and other the king's

king's officers, as by lords of franchiſes, that there is nothing more uſual:

Upon the whole, he ſays, that the opinion of my lord *Coke*, in his 3 *Inſt.* 228. hath truly ſtated the law, at leaſt, as it ſtands upon the ſtatute of 1 *R.* 3. *viz.* 1. That *before* the indictment, the goods of any perſon cannot be ſearched, inventoried, or in any ſort ſeized. 2. That *after* the indictment, they cannot be ſeized and removed, or taken away, before conviction or attainder:

But then it may be ſaid, to what purpoſe may they be ſearched and inventoried after indictment, if they may not be removed, but are equally liable to imbezilling as before:

I think (he ſays) he is not bound to find ſureties, neither hath the officer at this day any power to remove them in default of ſureties, and commit them to the vill, but only to inventory them, and leave them where he found them (unleſs in caſe of a ſecond *capias* on the 25 *Ed.* 3. *c.* 14.) for the priſoner or party indicted may ſell them *bona fide*; and if he may do ſo, the vendee may take them, and the *villata* cannot refuſe the delivering of them to the vendee, tho' the goods had been delivered to them:

But there is this advantage by the viewing and appraiſing, that thereby the king is aſcertained what the goods are, and may purſue them that take or imbezil them, by information (if the party happen to be convict) and try the property with them, whether they are really ſold, or ſold only fraudulently without valuable conſideration, to prevent the forfeiture. 1 *H. H.* 363, 4, 5, 6, 7.

II. Of loſs of dower.

Forfeiture of dower in felony.

1. Albeit a perſon ſhall be attainted of felony, yet his wife ſhall not forfeit her dower. 1 *Ed.* 6. *c.* 12. *ſ.* 17.

In treaſon.

2. But on his attainder of treaſon, ſhe ſhall forfeit her dower. 5 & 6 *Ed.* 6. *c.* 11. *ſ.* 13. But in ſome kinds of treaſon (particularly with regard to the coin) there is a ſpecial ſaving of the wife's dower by ſtatute.

III. Of corruption of blood.

Corruption of blood.

1. It is agreed, that by an attainder of treaſon or felony, the blood is ſo far ſtained or corrupted, that the party loſes all the nobility or gentility he might have had before, and becomes ignoble. 2 *Haw.* 456.

2. Alſo, that he can neither inherit as heir to an anceſtor, nor have an heir. 2 *Haw.* 456.

3. But

3. But the king's pardon, tho' it doth not reſtore the blood, yet as to iſſues born after, hath the effect of a reſtitution. 1 *H. H.* 358.

4. But reſtitution of blood in its true nature and extent, can only be by act of parliament. 1 *H. H.* 358. 2 *Haw.* 458.

Forgery.

1. FORGERY is an offence at common law, and an offence alſo by ſtatute.

2. Forgery at the common law, is an offence in falſly and fraudulently making or altering any manner of record, or any other authentick matter of a publick nature; as a pariſh regiſter, or any deed, will, privy ſeal, certificate of holy orders, protection of a parliament man, and the like. 1 *Haw.* 182, 184.

As for writings of an inferior nature, as private letters, and ſuch like, the counterfeiting of them is not properly forgery; therefore in ſome caſes it may be more ſafe to proſecute ſuch offenders for a miſdemeanor, as cheats. For by reaſon of the uncertainty of opinions, concerning proper forgeries at common law, indictments are generally brought upon ſome of the following ſtatutes, and very few at common law. But if the indictment is at common law, and the offender is convicted, he may be pilloried, fined, and impriſoned. *Wood. b.* 3. *c.* 3. 1 *Haw.* 184.

But as to the power of juſtices of the peace in this matter, Mr. *Hawkins* ſays, it hath been ſettled of late, that they have no juriſdiction over forgery at the common law; the principal reaſon of which reſolution (he ſays) as he apprehended, was, that inaſmuch as the chief end of the inſtitution of the office of theſe juſtices was for the preſervation of the peace againſt perſonal wrongs and open violence, and the word *treſpaſs* in its moſt proper and natuarl ſenſe, is taken for ſuch kind of injuries, it ſhall be underſtood in that ſenſe only in the commiſſion, or at the moſt to extend to ſuch other offences only as have a direct and immediate tendency to cauſe ſuch breaches of the peace, as libels, and ſuch like, which on this account have been adjudged indictable before juſtices of the peace. 2 *Haw.* 40. 1 *Salk.* 406.

But Mr. *Barlow* ſays nevertheleſs, that it ſeemeth clear, that a juſtice of the peace may take an information there-

of, bind over the informer, examine the offender, certify his examination to the proper judges, and commit him to priſon in order to abide his trial. *Barl.* 244.

3. The ſtatutes that make forgery an offence are theſe that follow:

The firſt is that famous ſtatute of the 5 *El. c.* 14. which by an example worthy to be imitated, doth (in order to prevent confuſion) repeal all former ſtatutes againſt forgery. By this it is enacted, that *if any perſon upon his own head and imagination, or by falſe conſpiracy and fraud with others, ſhall wittingly, ſubtilly, and falſely forge or make, or ſubtilly cauſe, or wittingly aſſent to be forged or made, any falſe deed, charter, or writing ſealed, court roll, or the will of any perſon in writing, to the intent that the eſtate of freehold, or inheritance of any perſon, of any lands, tenements, or hereditaments, freehold or copyhold, or the right, title, or intereſt of any perſon in the ſame may be moleſted, troubled, defeated, recovered, or charged; or ſhall pronounce, publiſh, or ſhew forth in evidence the ſame as true, knowing the ſame to be falſe and forged, to the intent as above (except lawyers or attornies for their clients, not being privy to the forgery); and ſhall be thereof convicted, either upon action at the ſuit of the porty, or otherwiſe according to the order and due courſe of the laws of this realm,——he ſhall pay to the party double coſts and damages, and be ſet upon the pillory in ſome open market town or other open place, and have both his ears cut off, and his noſtrils ſlit and ſeared with a hot iron, and ſhall forfeit the profits of his lands during life, and be impriſoned alſo during life.* ſ. 2.

And all juſtices of oyer and terminer, and juſtices of aſſize ſhall have power to inquire of, hear, and determine all offences in this act. ſ. 10.

Upon his own head] When the proceedings were in latin *ſuper proprium ſuum caput* was allowed to be good upon an indictment on this ſtatute; the law having more regard that the ſtatute be ſtrictly purſued, than rendred into proper latin. 1 *Haw.* 187.

Forge or make] Making a ſecond deed, and antedating it, with intent to make it take place of a former deed, is forgery within this ſtatute. 3 *Inſt.* 167.

Or ſubtilly cauſe, or willingly aſſent] To *cauſe*, is to procure or counſel one to forge; to *aſſent*, is to give his aſſent or agreement afterwards, to the procurement or counſel of another; to *conſent*, is to agree at the time of the procurement or counſel, and ſuch is in law a procurer. 3 *Inſt.* 169.

But

But lord *Hale* ſays, that an *aſſent* after the fact is committed, makes not the party aſſenting guilty or principal in the forging; but it muſt be a precedent, or concomitant aſſent. 1 *H. H.* 684.

Falſe deed, charter, or writing] It ſeems to be no way material, whether a forged inſtrument be made in ſuch a manner, that if it were in truth ſuch as it is counterfeited for, it would be of validity or not; and upon this ground it hath been adjudged, that the forgery of a protection in the name of a member of parliament, who in truth at the time was not a member, is as much a crime as if he were. 1 *Haw.* 184.

Writing ſealed] Theſe are large words; and the making of a falſe cuſtomary of a manor in writing under ſeal, containing divers falſe cuſtoms, to the diſheriſon of the lord of the manor, and that the ſame had been allowed and permitted by the lord of the manor, which was alſo falſe, was reſolved to be within theſe words *a falſe writing ſealed.* 3 Inſt. 171.

Sealed] It is required that the deed, charter, or writing muſt be ſealed, that is, have ſome impreſſion upon the wax; for wax, without an impreſſion is not a ſeal. 3 *Inſt.* 169.

Court roll, or will] Here are two writings which need not be ſealed, becauſe they may take effect without any ſeal, for that they be no deeds; and no writing can have the force of a deed without a ſeal. 3 *Inſt.* 170.

Will] If any perſon which writeth the will of a ſick man, inſerteth a clauſe therein concerning the deviſe of lands, without any direction of the deviſor, this is forgery, altho' he did not forge the whole will. 3 *Inſt.* 170.

To the intent that the ſtate of freehold or inheritance of any perſon, of any lands, tenements, or hereditaments, freehold or copyhold, or the right, title, or intereſt of any perſon in the ſame may be moleſted, troubled, defeated, recovered, or charged] *E.* 4 *G.* 2. *K.* and *Japhet Crooke.* The defendant was convicted on this ſtatute for forging a leaſe and releaſe. And the indictment ſets forth, that *Garbut* and his wife were ſeiſed in fee of certain meſſuages, lands, and tenements called *Jawick* in the pariſh of *Clackton* in *Eſſex*, and that the defendant intending to moleſt them and their intereſt in the premiſſes, forged a leaſe and releaſe as from *Garbut* and his wife, whereby they are ſuppoſed for a valuable

luable conſideration to convey to him "all that park "called *Jawick* park in the pariſh of *Clackton* in *Eſſex*, "containing eight miles in circumference, with all the "deer, woods, &c. thereto belonging." It was moved in arreſt of judgment, that the premiſſes ſuppoſed to be conveyed, were ſo materially different from thoſe which were really the eſtate of *Garbut* and his wife, which was houſes, lands, and tenements; that it was impoſſible this conveyance ever could moleſt or diſturb them: if it was a true deed, it could not paſs their lands at law, for want of a proper deſcription; and though where lands are improperly deſcribed, a court of equity will oblige the vendor to convey them by proper words, yet that is only where there is a previous contract for a ſale, and they do it as carrying that contract into execution. The court for ſeveral terms inclined ſtrongly with the objection; but this term *Raymond* Ch. J. declared that they were all of opinion to over-rule it: for by the words of the act, it is not neceſſary that there ſhould be a charge or a poſſibility of a charge: it is ſufficient that it be done with that intent, and the jury have found that it was done with intent to moleſt *Garbut* and his wife in the poſſeſſion of their lands. Accordingly judgment was given for the king, and the defendant had ſentence to undergo the puniſhment appointed by the act for forging a deed, and the ſame was executed upon him at Charing-croſs. *Str.* 901.

Pronounce or publiſh] That is, when one by words, or writing pronounceth or publiſheth the deed to any other as true. 3 *Inſt.* 171.

Knowing the ſame to be forged] This knowledge may come by two means; either of his own knowledge, or of the relation of another; for if another tell him it is forged, and he publiſh it afterwards as true, and it prove to be forged indeed, he is in danger of this ſtatute. 3 *Inſt.* 271. 1 *Haw.* 187.

But lord *Hale* ſays, that tho' ſuch a relation may be an evidence of fact to prove his knowledge, yet it is not concluſive; for perchance there might be circumſtances of fact, that might make the perſon relating it, or his relation, not credible: So that the *knowing* muſt be upon the whole matter left to the jury, upon the circumſtances of the caſe. 1 *H. H.* 685.

Juſtices of oyer and terminer] Albeit juſtices of the peace, by their commiſſion, have power to hear and determine felonies

felonies and treſpaſſes, yet they are not included under the name of juſtices of oyer and terminer; for juſtices of oyer and terminer are known by one diſtinct name, and juſtices of the peace by another. 3 *Inſt.* 103.

And by the ſame ſtatute it is further enacted, that *if any perſon, upon his own head or imagination, or by falſe conſpiration or fraud with any other, ſhall wittingly, ſubtilly, and falſly forge or make, or cauſe or aſſent to be made and forged any falſe charter, deed or writing, to the intent that any perſon may have or claim any eſtate or intereſt for term of years in any manors, lands, tenements, or hereditaments, not being copyhold, or any annuity in fee-ſimple, fee-tail, or for term of life, lives, or years; or any obligation, or bill obligatory, or any acquittance, releaſe, or other diſcharge of any debt, account, action, ſuit, demand, or other thing perſonal; or ſhall pronounce, publiſh, or give the ſame in evidence as true, knowing the ſame to be falſe and forged; he ſhall, on conviction in like manner, pay to the party double coſts and damages, and be ſet on the pillory, and have one of his ears cut off, and be impriſoned for a year.* ſ. 3.

Obligation or bill obligatory] The forgery of a deed of gift of mere perſonal chattels, is not within this ſtatute. 1 *Haw.* 186.

And *if after verdict, the plaintiff ſhall releaſe the judgment or execution, or ſuffer a diſcontinuance, it ſhall only diſcharge his own coſts and damages, and not the other puniſhment.* ſ. 6.

And by the ſame ſtatute it is further enacted, that *if any perſon ſhall after conviction offend again in any of the ways abovementioned, he ſhall be guilty of felony without benefit of clergy.* ſ. 7, 8.

4. Thus ſtood the matter upon the ſtatute of 5 *El.* Afterwards by many ſubſequent ſtatutes (ſeveral of which were occaſional only, and adapted to the particular juncture and circumſtances of the time in which they were made, but which are referred to and inforced by the ſubſequent ſtatutes on the ſame ſubject) divers other forgeries were made felony without benefit of clergy for the firſt offence; and others had other puniſhments aſſigned them: Such are theſe that follow:

It ſhall be felony without benefit of clergy, to forge or counterfeit,

(1) Any bank bills, or notes, or the ſeal of the governor and company of the bank of *England.* 7 & 8 *W.* *c.* 31. *ſ.* 36. 8 & 9 *W.* *c.* 20. *ſ.* 36. 11 *G.* *c.* 9. *ſ.* 6. 12 *G.* *c.* 32. *ſ.* 9.

And in general, any bank note, bank bill, of exchange, dividend warrant, or any bond or obligation under the ſeal of the bank, or indorſement thereon; or knowingly offering to diſpoſe thereof. 15 *G.* 2. *c.* 13. *ſ.* 12.

(2) *India* bonds. 12 *G. c.* 32. *ſ.* 9.

(3) Bonds, receipts, warrants, or ſeal of the ſouth-ſea company. 9 *An. c.* 21. *ſ.* 57. 6 *G. c.* 4. *ſ.* 56. 6 *G. c.* 11. *ſ.* 50. 12 *G. c.* 32. *ſ.* 9.

(4) Exchequer bills; by the ſeveral acts which direct the iſſuing the ſame.

(5) Any power to transfer ſtocks. 8 *G. c.* 22. *ſ.* 1. or perſonating the owners thereof. 4 *G.* 3. *c.* 25.

(6) Lottery tickets and orders: by the ſeveral lottery acts.

(7) Policy of aſſurance. 6 *G. c.* 18. *ſ.* 13.

(8) Mediterranean paſſes. 4 *G.* 2. *c.* 18.

(9) Army debentures. 5 *G. c.* 14. *ſ.* 10.

(10) Marriage licence or regiſtry of a marriage. 26 *G.* 2. *c.* 33.

(11) Stamps on vellum, parchment, and paper, by the ſeveral ſtamp acts.

(12) Stamps on linen imported. 10 *An. c.* 19. *ſ.* 97. And ſelling it knowingly with a counterfeit ſtamp; 100*l.* and the pillory. *id.*

And by the 9 & 10 *W. c.* 41. Forgers of ſeamens wills, or letters of attorney, ſhall over and above the penalties by former laws, forfeit 200*l.* with coſts; half to the king, and half to him that will ſue. *ſ.* 3.

5. And beſides theſe (and other like) particular laws, in the 2 *G.* 2. a general law was made (for five years, and was afterwards revived and made perpetual), by which it is enacted, that *if any perſon ſhall falſly make, forge, or counterfeit, or cauſe or procure the ſame to be done, or willingly aid or aſſiſt in the falſe making, forging, or counterfeiting any deed, will, bond, writing obligatory, bill of exchange, promiſſory note, indorſement or aſſignment of any bill of exchange or promiſſory note, acquittance or receipt for money or goods, with intent to defraud any perſon; or ſhall utter or publiſh the ſame as true, knowing the ſame to be forged;——he ſhall be guilty of felony without benefit of clergy; but not to work corruption of blood, or diſheriſon of heirs.* 2 G. 2. c. 25. ſ. 1, 5.

6. And by the 7 *G.* 2. *c.* 22. It is further enacted, by way of addition to the foregoing, that *if any perſon ſhall falſly make, alter, forge, or counterfeit, or willingly act or aſſiſt*

aſſiſt in the falſe making, altering, forging, or counterfeiting any acceptance of any bill of exchange, or the number or principal ſum of any accountable receipt for any note, bill, or other ſecurity for payment of money, or any warrant or order for payment of money or delivery of goods, with intent to defraud any perſon; or ſhall utter or publiſh the ſame as true, with intent to defraud any perſon, knowing the ſame to be falſe;— he ſhall be guilty of felony without benefit of clergy: and this without any ſaving of the corruption of blood, or diſheriſon of heirs.

Warrant or order for payment of money or delivery of goods] In the caſe of *Mary Mitchell*, on this order,

" Mr. Jefferys. Oct. 16. 1753.

" I deſire you to let this woman have ſix yards of or-
" dinary ſtuff, one pair of ſtockings, one ſhift, one apron,
" one handkerchief, and I will ſee it all paid for. Wit-
" neſs my hand, *George May*:"

Upon a conference among the judges, nine of them were of opinion, that this writing is not a warrant or order for the delivery of goods within the meaning of the act: That the words *warrant* or *order* do import, that the perſon giving ſuch warrant or order hath or at leaſt claimeth an intereſt in the money or goods which are the ſubject matter of that warrant or order; that he hath or at leaſt aſſumeth a diſpoſing power over ſuch money or goods; and taketh on him to transfer the property, or cuſtody of them at leaſt, to the perſon in whoſe favour ſuch warrant or order is made: And tho' the preſent caſe, and many others of the like kind, may come within the miſchiefs intended to be prevented by the act, yet in the conſtruction of acts ſo penal as this, the old rule of adhering ſtrictly to the letter muſt not be departed from. And the priſoner was diſcharged from the indictment which was brought againſt her for forging of this order. *Foſt.* 119.

7. Forgery is excepted out of the act of general pardon; 20 *G.* 2.

Fornication. See **Lewdneſs.**

Frame work knitters.

1. ALL frame work knitted pieces and ſtockings, made of thread, cotton, worſted. or yarn, or of any mixture therewith, or of any other materials (except ſuch as ſhall be made of ſilk only), which ſhall contain 3 or more threads, ſhall be marked with the ſame number of ilet-holes, and no more, as there are threads contained in each piece or pair; and ſuch ilet-holes ſhall be made diſtinctly in one direct line, or in the ſame courſe, and ſhall not exceed the diſtance of three inches from the two extreme ilet-holes; and no ſuch ilet-holes ſhall be made within the diſtance of 4 inches of any letter, figure, mark, or other device, which ſhall be put or woven in any ſuch goods or manufactures; and all ſuch ilet-holes ſhall be made within 4 inches of the top or end of every ſuch piece or pair; and no ilet-hole, or imitation thereof, ſhall be made in any frame work knitted piece or pair of ſtockings, upon any account whatſoever, except as herein before directed. 6 *G.* 3. *c.* 29. *ſ.* 1.

Provided, that nothing herein ſhall extend to prevent any manufacturers from uſing remnants, or materials of any ſort, in the welt and tops of ſtockings only, at any diſtance not exceeding 3 inches from the top, altho' the ſame ſhall not contain ſo great a number of threads as are contained in the legs of ſuch ſtockings. *ſ.* 2.

2. And if any maſter frame work knitter, or maſter hoſier, or any other perſon, ſhall make or work, or cauſe or procure to be made or wrought, any frame work knitted goods, of any the materials aforeſaid or any mixture thereof (except ſuch as ſhall be made of ſilk only), without being ſo marked; he ſhall forfeit the ſame, and alſo 5 l. for each piece or pair of ſtockings. *ſ.* 3.

Provided, that the ſaid penalty of 5 l. ſhall not extend to any journeyman, apprentice, ſervant, or perſon not making ſuch goods on his own account: But ſuch perſon offending herein ſhall forfeit not exceeding 40 s. nor leſs than 5 s; unleſs he can prove that the goods by him unduly marked were ſo marked by direction of his maſter or perſon by whom he was employed, in which caſe he ſhall not be ſubject to any penalty. *ſ.* 4, 5, 6.

3. And if any frame work knitter, hoſier, or other perſon, after *Mar.* 25, 1768. ſhall ſell or expoſe to ſale,

any

any of the ſaid goods, not ſo marked as aforeſaid; he ſhall forfeit the ſame, and alſo 5 l. for each piece or pair. ſ. 7.

Provided, that if the perſon ſelling or expoſing the ſame to ſale, ſhall diſcover the vendor or ſeller thereof, ſo as he may be convicted; ſuch perſon ſhall be diſcharged. ſ. 8.

4. And one juſtice where the offence ſhall be committed (not being a frame work knitter, hoſier, or proprietor of frames) may convict the offender, on the oath of one witneſs: And if the penalties or forfeitures ſhall not be forthwith paid, the ſaid juſtice ſhall iſſue his warrant to levy the ſame by diſtreſs; and if no goods, or not ſufficient, can be found, ſuch juſtice ſhall, on oath made to him by the perſon who ſhall have the execution of the warrant, commit the offender to the common gaol of the place where the offence was committed, for any time not exceeding 3 months, unleſs the penalties and forfeitures ſhall be ſooner paid and ſatisfied. All which penalties and forfeitures ſhall be applied, half to the informer, and half to the poor. ſ. 9.

5. Perſons aggrieved may appeal to the ſeſſions, giving 10 days notice to the juſtice; and within 2 days after notice, entring into recognizance before a juſtice, with two ſureties, to try the appeal at ſuch ſeſſions: And the juſtices there, on due proof of ſuch notice and recognizance, ſhall hear and determine the ſame, and may award coſts to either party; and their determination ſhall be final, binding, and concluſive, to all intents and purpoſes. ſ. 10.

6. Provided, that nothing herein ſhall extend to abridge or take away any rights of privileges, of the maſter, wardens, and aſſiſtants, of the company of frame work knitters. ſ. 12.

Fraud. See **Cheat.**

Fruit and fruit trees. See **Wood.**

Fuel.

BY the 43 *El. c.* 14. All faggots to be ſold ſhall contain in compaſs, beſides the knot of the bond, 24 inches of aſſize; and every faggot ſtick within the bond, ſhall contain full three foot of aſſize, except only one ſtick to be but one foot long, to ſtop or harden the binding.

By the 9 *An. c.* 15. *ſ.* 1. All billets (except thoſe made of beech, 10 *An. c.* 6.) that lie expoſed in publick places where they are uſually bought or ſold, ſhall be aſſized, and cut or marked in manner following; That is to ſay,

All billets of what ſcantling or denomination ſoever, ſhall contain in length three foot and four inches, and be of the following dimenſions; *viz.*

Names of the billets.	Round		Half round		Quarter cleft		
	in.	qr.	in.	qr.	in.	qr.	
A ſingle	7	2	0	0	0	0	No notch.
A caſt	10	2	12	1	12	0	One notch.
A trois	13	0	15	0	14	3	Three in the middle.
caſt	15	0	17	1	17	0	Two notches.
3 caſt	18	1	21	1	21	0	One at each end, and one in the middle.
4 caſt	21	1	24	2	24	0	4 notches.
5 caſt	23	3	27	2	27	0	5 notches.
6 caſt	26	0	30	0	29	2	6 notches.
7 caſt	28	0	32	2	32	0	7 notches.
8 caſt	30	0	34	3	34	0	8 notches,
9 caſt	31	3	36	3	36	1	9 notches.
10 caſt	33	2	38	3	38	0	10 notches.
11 caſt	35	1	——		——		11 notches.
12 caſt	36	3	——		——		12 notches.
13 caſt	38	1	——		——		13 notches.
14 caſt	39	3	——		——		14 notches.
15 caſt	41	0	——		——		15 notches.
16 caſt	42	2	——		——		16 notches.
17 caſt	43	3	——		——		17 notches.
18 caſt	45	0	——		——		18 notches.
19 caſt	46	1	——		——		19 notches.
20 caſt	47	2	——		——		20 notches.

And if they ſhall not be thus aſſized and marked, then on information to a juſtice of the peace, mayor, or other head officer, he ſhall call before him ſix good and lawful men of the town, and ſhall ſwear them truly to inquire and preſent, whether the ſame be of good and ſufficient aſſize; and if they ſhall preſent that any of them is not ſufficient, the ſame ſo being deficient ſhall be forfeited, and be delivered to the overſeers, to be by them diſtributed to the poor. *id. ſ.* 2.

And by the 43 *El. c.* 14. The billets ſhall be meaſured within ſix inches of the midſt; and the ſurpluſage which ſhall happen between any two next meaſures, being above the one, and under the other, ſhall he taken for the benefit of the buyer.

Fuller's earth. See **Woollen Manufacture.**
Furze. Burning it in foreſts. See **Burning.**

Game.

THE ſtatutes relating to this title are very numerous, and the ſenſe ſometimes a little perplexed, ſo that perhaps upon a view of the whole, it may ſeem, that about four or five new acts, comprehending the ſeveral heads here undermentioned, and repealing all the preceding ones, would conduce to render this branch of our laws more intelligible and uſeful.

After having firſt premiſed (in order to avovid frequent repetitions throughout this whole title) that it is enacted by the ſtatute of the 8 *G. c.* 19. that where any perſon for any offence againſt any law in being at the making of the ſaid act, for the better preſervation of the game, ſhall be liable to pay any pecuniary penalty or ſum of money, on conviction before a juſtice of the peace, the proſecutor may either proceed to recover the ſame in ſuch manner, or he may ſue for the ſame (before the end of the ſecond term after the offence committed, 26 *G.* 2. *c.* 2.) by action of debt, or on the caſe, bill, plaint, or information, in any court of record at *Weſtminſter*, wherein if he recovers he ſhall have double coſts: Provided, that the offender ſhall not be proſecuted both ways; and in caſe of a ſecond proſecution, he may plead in his defence the former proſecu-

tion pending, or the conviction or judgment thereupon had. And by the 2 *G.* 3. *c.* 19. whereas a moiety of the ſaid penalty by ſeveral acts is directed to be applied to the uſe of the poor of the pariſh where the offence was committed, by reaſon whereof inhabitants of the ſaid pariſh have been diſallowed to give evidence; it is enacted, that it ſhall be lawful for any perſon to ſue for the whole of ſuch penalty to his own uſe, and if he recovers he ſhall have double coſts; ſuch action to be brought within ſix months after the offence committed: (This being premiſed) I will treat of this ſubject under the following heads:

I. Origin of the diſtinct property in game.
II. Certain obſervations concerning foreſts, chaſes, parks, and warrens.
III. Concerning gamekeepers.
IV. Qualification by eſtate or degree to kill game; with the puniſhment of perſons unqualified.
V. Laws for preſerving the four footed game in particular.
VI. Laws for preſerving the winged game in particular.
VII. Laws for preſerving the game of fiſh in particular.

Under which three laſt heads are comprehended thoſe reſtrictions which ſeem to concern all perſons whatſoever, whether qualified or not: for altho' a man be qualified to kill game, yet he muſt kill it in a lawful manner, and not in ſuch ways as tend utterly to deſtroy it.

I. Origin of the diſtinct property in game.

Before we take notice of the ſtatutes made for the preſervation of the game, it may be requiſite to obſerve how the common law ſtood herein; which depends upon the difference made between tame and wild animals.

The tame animals, ſuch as horſes, cows, ſheep, and the like, are ſuch creatures, as by reaſon of their ſluggiſhneſs and unaptneſs for motion, do not fly the dominion of mankind, but generally keep within the ſame paſtures and limits, and may be eaſily purſued and overtaken, if by accident they ſhould eſcape; and therefore the

the owner hath the ſame kind of property in them, as he hath in all other inanimate chattels, and for the violation thereof may bring an action of treſpaſs.

The wild animals, ſuch as deer, hares, foxes, and ſuch like, are thoſe, which by reaſon of their ſwiftneſs or fierceneſs fly the dominion of man; and in theſe, no perſon can have a property, unleſs they be tamed or reclaimed by him. And as property is the power that a man hath over any other thing for his own uſe, and the ability that he hath to apply it to the ſuſtentation of his being; when that power ceaſeth, his property is loſt; and by conſequence an animal of this kind, which after any ſeizure eſcapes into the wild common of nature, and aſſerts its own liberty by its ſwiftneſs, is no more mine than any creature in the *Indies*, becauſe I have it no longer in my power or diſpoſal.

Hence it appears, that by the common law, every man had an equal right to ſuch creatures as were not naturally under the power of man; and that the mere caption or ſeizure created a property in them.

By immediate taking and killing them, they belong to ſuch perſon in the ſame manner as any other chattels, and cannot be taken from him; ſince the firſt ſeizure and caption was ſufficient to veſt the property of them in him.

Alſo by taking and taming them, they belong to the owner, as do the other tame animals, ſo long as they continue in this condition, that is, as long as they can be conſidered to have the mind of returning to their maſters; for while they appear to be in this ſtate, they are plainly the owner's, and ought not to be violated; but when they forſake the houſes and habitations of men, and betake themſelves to the woods, they are then the property of any man.

Another way of gaining property in them is, by incloſure; and then the beaſts muſt be underſtood to be mine, as the profits of the ſoil it ſelf are; and they can no more be taken and carried off, than any other profits of the land: and therefore if deer be incloſed in a park or paddock, or conies in a field or warren, they become ſo much a man's own, that no one ought to kill or take them away. And ſince in this caſe it is the incloſure that retains them (for take away the incloſure, and they are in their natural liberty); therefore the party is ſaid to have right as he hath to any other profits there incloſed, and a diſtinct and independant right in every animal.

It is a maxim of the common law, that ſuch goods of which no one can claim any property do belong to the king by his prerogative; and hence all thoſe animals *feræ naturæ*, which come under the denomination of *game*, are ſtyled in our laws *his majeſty's* game: and that which he hath, he may grant to another; and conſequently another may preſcribe to have the ſame, within ſuch a precinct or lordſhip. And from hence cometh the right of lords of manors, or others, unto the game within their reſpective liberties,

And upon this foundation the ſeveral acts of parliament are eſtabliſhed, for the preſervation of theſe ſpecies of animals; for the recreation and amuſement of perſons of fortune, unto whom the king with the advice and aſſent of parliament hath granted the ſame; and to prevent perſons of inferior rank, from ſquandring that time, which their ſtation of life requireth to be more profitably employed. For theſe reſtrictions do not take from the common people any right which they ever had; but only grant unto ſome perſons thoſe privileges which before reſted ſolely in the king. 2 *Bac. Abr.* 612, 613.

II. Certain obſervations concerning foreſts, chaſes, parks, and warrens.

Foreſt, what. 1. A *foreſt* is a certain territory of woody grounds, and fruitful paſtures, privileged for wild beaſts and fowls of foreſt, chaſe, and warren, to reſt and abide there in the ſafe protection of the king, for his delight and pleaſure: which territory of ground ſo privileged is meered and bounded with unremovable marks, meers, and boundaries, either known by matter of record, or by preſcription; and alſo repleniſhed with wild beaſts of venary or chaſe, and with great coverts of vert for the ſuccour of the ſaid beaſts there to abide: for the preſervation and continuance of which, there are particular officers, laws, and privileges belonging to the ſame, requiſite for that purpoſe, and proper only to a foreſt, and to no other place. *Manw.* 143.

Note; That *vert* comprehends every thing which bears green leaves in the foreſt. *Manw.* 146.

Beaſts of foreſt. 2. Beaſts of foreſt are properly hart, hind, buck, hare, boar and wolf; but legally all wild beaſts of venary. 1 *Inſt.* 233.

3. *Purlieu*

3. *Purlieu* comes from the French, *pur*, clear, entire, and exempt; and *lieu*, a place: that is a place, entire, clear, or exempt from the foreſt: and ſignifies thoſe grounds which *Henry* the ſecond, *Richard* the firſt, or king *John* added to their ancient foreſts, over other mens grounds; and were diſafforeſted by the ſtatute of *charta de foreſta*. 4 Inſt. 303. Manw. 242. Purlieu, what.

But nevertheleſs the *purlieu* as to ſome purpoſes is foreſt ſtill, and is diſafforeſted as to the particular owners of the land and for their benefit, and not generally to give liberty to any man to hunt the wild beaſts, and ſpoil the vert. And if thoſe beaſts do eſcape out of the foreſt into the *purlieu*, the king hath a property in them ſtill againſt any man, but againſt the owners of the woods and lands in which they are; and ſuch owners have a ſpecial property in them *ratione loci*, but yet ſo that they hunt them fairly, and not foreſtall them in their return towards the foreſt. *Manw.* 292.

But a *purlieu* man may not hunt in every man's lands within the *purlieu*, but in his own lands only; and therefore if he find the beaſts of the foreſt in his woods or lands in the *purlieu*, in ſuch caſe he hath a property in them againſt any other man *ratione ſoli* (the king only excepted). And if he begins the hunting in his own lands, then by reaſon of that property he may purſue his hunting thro' any man's woods or lands, ſo as he doth not enter into any foreſt, chaſe, park, or warren. And if he kill the beaſt in another man's land, and out of ſuch privileged place, he may take and carry away the ſame by reaſon of the firſt property. But if the beaſt recover the foreſt, he muſt call back his dogs, for they are then the king's wild beaſts again. And if he do not call back and rebuke his dogs, and they kill the beaſt in the foreſt, he is a treſpaſſer, tho' himſelf never came within the bounds thereof. But if in hunting towards the foreſt, the dogs faſten on it before it is within the bounds thereof, and the dogs ſtill hanging on are drawn by the deer into the foreſt, and it is killed there, then by reaſon of the firſt property which he had *ratione ſoli*, and alſo by the purſuit and poſſeſſion thereof before it entred the foreſt, he may lawfully enter and take it. *Manw.* 194,——7.

4. A *chaſe* (from *chaſſer*, to chaſe) is a privileged place for receipt of deer and beaſts of the foreſt, and is of a middle nature betwixt a foreſt and a park. It is commonly leſs than a foreſt, and not endowed with ſo many liberties, as officers, laws, courts; and yet is of a larger compaſs than Chaſe, what.

than a park, having more officers and game than a park. Every foreſt is a chaſe, but every chaſe is not a foreſt. It differeth from a park in that it is not incloſed; for if it is incloſed, it is a good cauſe of forfeiture; tho' it muſt have certain metes and bounds, but it may be in other mens grounds as well as in one's own. *Read.* Game. *Manw.* 49.

Beaſts of chaſe.

5. Beaſts of chaſe are the buck, doe, fox, martern, and roe. *Manw.* 50.

Park, what.

6. A *park* (from the French, *parquer*, to incloſe) is a large parcel of ground privileged for wild beaſts of chaſe by the king's grant, or by preſcription. *Read.* Game.

Beaſts of park.

7. The beaſts of park properly extend to the buck, doe, fox; but in a common and legal ſenſe to all the beaſts of the foreſt. *Read.* Game.

Park to be incloſed.

8. A park muſt be incloſed; for if it lies open, it is a good cauſe of ſeizure into the king's hands, as a thing forfeited: and the owner cannot have an action againſt thoſe that hunt in his park, if it lies open. *Read.* Game.

Deer ſhall go to the heir.

9. Deer in a park ſhall go to the heir, and not to the executor. 1 *Inſt.* 8.

Warren, what.

10. A *warren* is a place privileged by preſcription or grant of the king, for the preſervation of the beaſts and fowl of the warren; *viz.* hares, conies, partridges, and pheaſants. *Read.* Game.

Need not to be incloſed.

11. A free warren may lie open, there being no neceſſity of incloſing it. *Read.* Game.

Conies ſhall go to the heir.

12. Conies in a warren (as hath been ſaid before of deer in the park) ſhall go to the heir, and not to the executor. 1 *Inſt.* 8.

Licence to erect.

13. It is not lawful for any man to erect a park, chaſe, or warren, without a licence under the great ſeal of the king; becauſe the common law gives no way to matters of pleaſure, for that they bring no profit to the commonwealth. 2 *Inſt.* 199.

But in the caſe of *K.* and *Sir William Lowther*, *M.* 12 *G.* There was a motion for leave to file an information in nature of a *quo warranto*, againſt Sir *William Lowther*, to ſhew by what authority he had made and ſet up a warren. But it was denied by the court; becauſe it was of a private nature, and therefore proper to be proſecuted only in the name of the attorney general by information, if his majeſty thought fit. And the like motion had been denied before in the caſe of the Lord *Liſburn*. L. Raym. 1409. Str. 637.

14. A foreſt is the higheſt franchiſe of princely pleaſure; the next to that is a free chaſe; a chaſe in one degree is the ſame as a park, only a park is incloſed, and a chaſe is always open; the next in degree to a free chaſe, is a park; and next unto a park, is the franchiſe of a free warren. *Manw.* 148. Which of theſe is the higeſt franchiſe.

15. A perſon may have common in a chaſe, as well as in a foreſt; but a foreſt is governed by the foreſt law, and a chaſe and park by the common law. 4 *Inſt.* 314. *Manw.* 49. Common in a chaſe.

16. If I find a pheaſant in my lands, and I let my hawk fly, I may follow the flight into another man's land, by reaſon of the firſt property which I had in the pleaſant *ratione ſoli*; and if my hawk kill the pheaſant in another man's land, I may enter and take it, by reaſon of that property and purſuit; and in that caſe, I ſhall not be puniſhed as a treſpaſſer for taking and carrying away the pheaſant, but only for entring the ground. But if the pheaſant fly into a warren (which is a privileged place for birds of warren) and the hawk kill it there, the falconer ſhall not have the pheaſant, but the owner of the warren. And the law is the ſame, in the caſes of all wild beaſts of the foreſt and chaſe. *Manw.* 193, 196. Treſpaſs in what caſe.

17. Notwithſtanding the common law allows of the hunting of foxes and badgers, being beaſts of prey, in another man's ground, becauſe the deſtroying of them is looked upon as a publick benefit; yet the digging and breaking the ground to unearth them is held to be unlawful, and the owner of the ground may maintain an action of treſpaſs in that caſe. *Cro. Jac.* 321. No treſpaſs in following beaſts of prey.

18. If conies are hunted out of the warren, or deer out of the park, and the warrener or parker purſue them, he may retake them; for the park or warren is an eſtabliſhment by the publick, to look after and preſerve the game; for all things unoccupied, in which no man hath a civil right, are under the regulation of the publick: now in parks and warrens, officers are eſtabliſhed by authority, to have an eye over the game, and to keep it within the boundaries; ſo that the property is not altered by driving it out of the incloſures, unleſs it be alſo out of the purſuit of the officers; for as long as he that is thus truſted doth purſue it, it is not in his natural liberty, but is ſtill belonging to the park or warren. 2 *Bac. Abr.* 613. Game eſcaped out of the incloſure, may be retaken on freſh ſuit.

III. Concerning

III. Concerning gamekeepers.

Who may appoint a gamekeeper.

1. All lords of manors, or other royalties, not under the degree of an eſquire, may by writing under their hands and ſeals (A) authorize one or more gamekeeper or gamekeepers, within their reſpective manors or royalties. 22 & 23 *C.* 2. *c.* 25. *ſ.* 2.

With power to kill game.

2. And may impower him thereby, upon their own manors, to kill hare, pheaſant, partridge, or any other game:

But if the gamekeeper ſhall, under colour thereof, kill or take the ſame for the uſe of the lord, and afterwards ſell and diſpoſe thereof without the lord's conſent; and be convicted, on complaint of ſuch lord, and on oath of one witneſs, before one juſtice; he ſhall be committed to the houſe of correction for three months, to be kept to hard labour. 5 *An.* *c.* 14. *ſ.* 4.

One gamekeeper in one manor; and to be entred with the clerk of the peace.

3. But no lord of a manor ſhall make above one perſon to be gamekeeper within any one manor, with power to kill game. And the name of ſuch perſon ſhall be entred with the clerk of the peace where the manor lies; the entry to be made and viewed without fee; and a certificate thereof ſhall be granted by the clerk of the peace, on payment of one ſhil ing:

And if any other gamekeeper, whoſe name is not ſo entred, *who ſhall not be otherwiſe qualified* by the laws of this kingdom to kill game, ſhall kill, ſell, or expoſe to ſale any hare, pheaſant, partridge, moor, heath game, or grouſe; he ſhall on conviction before one juſtice, on oath of one witneſs, forfeit for every offence 5l. half to the informer, and half to the poor, by diſtreſs: for want of diſtreſs, to be ſent to the houſe of correction for three months for the firſt offence, and for every other offence four months. 9 *An.* *c.* 25. *ſ.* 1.

Who ſhall not be otherwiſe qualified] From theſe words it ſeemeth clear, that a gamekeeper who is qualified in his own right to kill game, need not to be entred with the clerk of the peace.

To be alſo a ſervant of the lord, or immediately employed for him.

4. And moreover, by the 3 *G.* *c.* 11. it is further enacted, that no lord of a manor ſhall make any perſon to be a gamekeeper with power to kill game, unleſs ſuch perſon be qualified by the laws of this realm ſo to do; or unleſs ſuch perſon be truly and properly a ſervant to the ſaid lord; or be immediately employed and appointed to take and kill the game for the ſole uſe of the ſaid lord, and not otherwiſe:

And

And if any perſon, not being qualified by the laws ſo to do, or not being truly and properly a ſervant of any lord of a manor, or not immediately employed and appointed to take and kill the game for the ſole uſe or immediate benefit of the ſaid lord, ſhall under colour or pretence of any power or authority, deputation or qualification to him granted by any lord of a manor, take and kill any hare, pheaſant, partridge, or other game whatſoever; or ſhall keep or uſe any greyhounds, ſetting dogs, hays, lurchers, guns, tunnels, or any other engine, to kill and deſtroy the game; he ſhall forfeit 5l. in like manner. *ſ.* 1.

5. The gamekeeper (ſo authoriſed) may ſearch for dogs and engines, and ſeize the ſame for the uſe of the lord, or deſtroy them. 22 & 23 *C.* 2. *c.* 25. *ſ.* 2. Gamekeeper's power to ſearch.

But it hath been adjudged, that an authority from the lord of the manor is not of itſelf ſufficient for this purpoſe, but that he ought to have a warrant from a juſtice of the peace. *Comb.* 183. *Carpenter* and *Adams*. At leaſt it may be ſafe to have ſuch warrant, eſpecially if any houſes are to be entred and ſearched.

For it would give too great a power to the gamekeepers, to leave it in their diſcretion to ſearch what places they ſhall think proper, as alſo to conſtitute them the judges whether ſuch or ſuch a perſon is or is not qualified to kill game. Therefore it is beſt to have a warrant from a juſtice of the peace, after information and oath of the offence firſt made.

IV. Qualification by eſtate or degree to kill game; with the puniſhment of perſons unqualified.

The qualification by eſtate for killing game, in the reign of K. *Richard* the ſecond, was 40s. a year; in the reign of K. *James* the firſt it was advanced to 10l. a year, and after that in ſome inſtances to 40l. a year; and at laſt in the reign of K. *Charles* the ſecond it was raiſed to 100l. a year. Not that the laws have become gradually more ſevere; but as the value of money decreaſed, the qualification was raiſed in proportion, the eſtate continuing nearly the ſame; for an eſtate of 40s. a year in the reign of K. *Richard* the ſecond was not much inferior to an eſtate of 100l. a year in the reign of K. *Charles* the ſecond. And the penalty for deſtroying the game was even more ſevere then

then than it is now; as I ſhall ſhew. For as thoſe ancient laws relating to the game are ſtill in force, and are generally enacted ſo to be by the ſubſequent ſtatutes, it will be neceſſary in order to have a through knowledge of this matter to inſert them in their order; becauſe the penalties on each being different, the proſecutor or juſtices may chuſe which of them they will convict an offender upon. Thus by the ſtatute of the 5 *An.* hereafter following, if a perſon not having 100 l. a year ſhall keep dogs or engines to deſtroy the game, he ſhall forfeit 5 l. but if ſuch perſon have not 40 s. a year, he may upon the ſtatute of *R.* 2. be puniſhed by a year's impriſonment; and ſo of the reſt: provided that no perſon be proſecuted upon more than one act for one offence.

40s. a year. 1. The firſt qualification relating to the game, was in the 13th year of the reign of *R.* 2. by which it is enacted, that no layman which hath not lands or tenements of 40 s. a year, nor clergyman if he be not advanced to 10 l. a year, ſhall have or keep any greyhound, hound, nor other dog to hunt; nor ſhall uſe fyrets, hays, nets, hare-pipes, nor cords, nor other engines for to take or deſtroy deer, hares, nor conies, nor other gentlemens game: on pain of a year's impriſonment. And the juſtices of the peace (that is, in their ſeſſions) ſhall inquire of the offenders in this behalf, and puniſh them by the pain aforeſaid. 13 *R.* 2. *ſt.* 1. *c.* 13.

10 l. a year. 2. The next qualification by eſtate or degree to kill game, was by a ſtatute in the 1 *J.* whereby it is enacted that every perſon who ſhall keep any greyhound for courſing of deer or hare, or ſetting dog or net to take pheaſants or partridges (except he be ſeiſed, in his own right or the right of his wife, of 10 l. a year eſtate of inheritance, or 30 l. a year of a lives eſtate, or goods to the value of 200 l. or be the ſon of a knight or lord, or the ſon and heir apparent of an eſquire) and be thereof convicted, by confeſſion, or oath of two witneſſes, before two juſtices, he ſhall be committed to gaol three months, unleſs upon conviction he pay 20 s. to the churchwardens for the uſe of the poor, or after one month after his commitment he become bound by recognizance with two ſureties before two juſtices, in 20 l. a piece, not to offend again in like manner. 1 *J.* *c.* 27. *ſ.* 3.

40 l. a year. 3. The next qualification relates to deer and conies only, in the 3 *J.* *c.* 13. by which it is enacted, that if any perſon not having hereditaments of 40 l. a year, or not worth in goods 200 l. ſhall uſe any gun or bow to kill

any

any deer or conies; or ſhall keep any buckſtall, nets, or coney dogs (except he have grounds incloſed, and uſed for the keeping of deer or conies, the increaſing of which ſaid conies ſhall amount to the value of 40 s. a year; or keepers or warreners in their parks, warrens, or grounds); in ſuch caſe any perſon having lands or hereditaments of 100 l. a year in fee, or for life, in his own right or the right of his wife, may take from ſuch perſon to his own uſe for ever ſuch guns, bows, backſtalls, nets, and coney dogs. 3 *J.* *c.* 13. *ſ.* 5.

4. The next qualification relates to pheaſants and partridges only, and is as follows: Every free warrener, lord of a manor, or freeholder ſeiſed in his own or his wife's right, of 40 l. a year of inheritance, or lives eſtate of 80 l. or worth in goods 400 l. may take pheaſants and partridges (in the day time only) in his own free warren, manor, or freehold, betwixt *Michaelmas* and *Chriſtmas* yearly, 7 *J.* *c.* 11. *ſ.* 7. 40 l. a year.

5. The laſt general qualification by eſtate or degree to kill game, and which is now moſt to be regarded, is in 22 & 23 *C.* 2. *c.* 25. by which it is enacted, that *every perſon, not having lands and tenements, or ſome other eſtate of inheritance, in his own or his wife's right, of the clear yearly value of* 100 l. per annum, *or for term of life, or having leaſe or leaſes of* 99 *years, or for any longer term, of the clear yearly value of* 150 l. (*other than the ſon and heir apparent of an eſquire, or other perſon of higher degree, and the owners and keepers of foreſts, parks, chaſes, or warrens, being ſtocked with deer or conies for their neceſſary uſe, in reſpect of the ſaid foreſts, parks, chaſes or warrens*) *is hereby declared to be a perſon by the laws of this realm, not allowed to have or keep for himſelf or any other perſon, any guns, bows, greyhounds, ſetting dogs, ferrets, coney dogs, lurchers, hays, nets, lowbels, harepipes, gins, ſnares, or other engines for the taking and killing of game.* ſ. 3. 100 l.

Other than the ſon and heir apparent of an eſquire] Eſquire, *eſcuyer*, *ſcutarius*, called by the Saxons *ſchilt knaben* or *knapen* (from whence cometh the word *knave*, which anciently ſignified a ſervant), is a name of dignity, next above the common title of gentleman, and below a knight. Heretofore he ſignified one that was attendant, and had his employment as a ſervant, waiting on ſuch as had the order of knighthood, bearing their ſhields, and helping them to horſe, or ſuch like. And this title is of that nature with us now, that to whomſoever either by blood, or place in the ſtate, or other eminency, we conceive

ſome higher attribute ſhould be given than that ſole title of gentleman, knowing yet that he hath no other honorary title legally fixed on him, we uſually ſtyle him an eſquire, in ſuch paſſages as require legally that his degree or ſtate be mentioned. *Seld. Tit. of Hon.* 374, 462, 687.

Searching for dogs and engines.

6. *And the gamekeeper, or any other perſon (authoriſed by warrant* (B) *of a juſtice of the peace) may in the day time ſearch the houſes, outhouſes, or other places of any ſuch perſon prohibited by this act to keep or uſe the ſame, as upon good ground ſhall be ſuſpected to have or keep in his cuſtody any guns, bows, greyhounds, ſetting dogs, ferrets, coney dogs, or other dogs to deſtroy hares or conies, hays, tramels, or other nets, lowbels, harepipes, ſnares, or other engines aforeſaid, and the ſame to ſeize, and keep, for the uſe of the lord of the manor, or otherwiſe to cut in pieces or deſtroy.* 22 & 23 C. 2. c. 25. ſ. 2.

20 s. penalty for keeping dogs and engines.

7. And if any unqualified perſon ſhall have, keep, or uſe any bows, greyhounds, ſetting dogs, ferrets, coney dogs, hays, lurchers, nets, tunnels, lowbels, harepipes, ſnares, or any other inſtruments for deſtruction of fiſh, fowl, or other game; and ſhall not give a good account before a juſtice, to the ſatisfaction of ſuch juſtice how he came by the ſame, or elſe ſhall not in ſome convenient time (to be ſet by ſuch juſtice) produce the party of whom he bought the ſame, or ſome other credible perſon to depoſe upon oath ſuch ſale thereof; he ſhall forfeit for every offence not under 5 s. nor above 20 s. half to the informer, and half to the poor, by diſtreſs; for want of diſtreſs, to be committed to the houſe of correction, not more than one month, nor leſs than ten days, there to be whipt and kept to hard labour. And if any perſon, ſo produced or charged with the ſaid offence, ſhall not before the juſtice give ſuch evidence of his innocence as aforeſaid, he ſhall be convicted thereof in the ſame manner as the perſon firſt charged therewith, and ſo from perſon to perſon till the firſt offender be diſcovered. 4 & 5 *W.* c. 23. *ſ.* 3.

And all lords of manors or their gamekeepers may within their manors oppoſe and reſiſt ſuch offender, in the night time, in the ſame manner as if the fact had been committed in any ancient chaſe, park, or warren incloſed. *ſ.* 4.

And no certiorari ſhall be allowed to remove any conviction, unleſs the party firſt become bound to the proſecutor in 50 l. with ſuch ſufficient ſureties as the juſtice ſhall think fit, to pay within a month after the conviction

confirmed, or *procedendo* granted, full coſts and charges; and in default thereof, the juſtice ſhall proceed to the execution of the conviction. *ſ.* 7.

8. But by a ſubſequent ſtatute 5 *An. c.* 14. *If any perſon, not qualified by the laws of this realm ſo to do, ſhall keep or uſe any greyhounds, ſetting dogs, hays, lurchers, tunnels, or any other engine to kill and deſtroy the game, and ſhall be thereof convicted* (C D E) *on the oath of one credible witneſs, before one juſtice, he ſhall forfeit* 5 l. *half to the informer, and half to the poor of the pariſh where the offence was committed, to be levied by diſtreſs* (F); *for want of diſtreſs, to be ſent to the houſe of correction* (G) *for three months for the firſt offence, and for every other offence four months.* 5 l. penalty for keeping dogs and engines; and the ſame to be ſeized.

And any juſtice, and lord within his manor, may take away ſuch dogs, nets, or other engines, which ſhall be in the power or cuſtody of any perſon not qualified. ſ. 4.

Not qulified by the laws of this realm] In the caſe of *K.* and *Chandler*, *T.* 12 *W.* Holt Ch. J. in delivering the opinion of the court, upon a conviction for deer-ſtealing, ſaid, that in theſe convictions by juſtices of the peace in a ſummary way, where the ancient courſe of proceeding by indictment and trial by jury is diſpenſed with, the court may more eaſily diſpenſe with forms; and it is ſufficient for the juſtices, in the deſcription of the offence, to purſue the words of the ſtatute, and they are not confined to the legal forms requiſite in indictments for offences by the common law. L. *Raym.* 581.

And in the caſe of *Q.* and *Matthews*, *T.* 10 *An.* On a conviction upon this ſtatute, exception was taken, that the conviction reciting the defendant not to be a perſon ſo and ſo qualified and enumerating diſtinctly the ſeveral qualifications in 22 & 23 *C.* 2. omitted a new qualification allowed by this act, namely, that he was not a perſon authoriſed by a lord (or lady) of a manor to kill game for his uſe. And by the court; Had it been generally laid thus, that he not being a perſon qualified according to law, and ſo on, it had been enough; but the qualifications being diſtinctly and ſeverally mentioned, the omiſſion of one is fatal. 10 *Mod.* 26. [But the caſe was adjourned.]

And in the caſe of *K.* and *Marriot*, *M.* 4 *G.* There was a conviction for keeping a greyhound; reciting that one *William Toune* came and informed, that the defendant being a perſon not qualified to keep a greyhound, did nevertheleſs keep one at ſuch a place, and therewith killed ſeveral hares; and that he being ſummoned did appear,

and being aſked what he had to ſay, offered nothing in excuſe, and therefore the juſtice convicted him. It was objected, that the juſtice ſhould ſet out, why the defendant is not a qualified perſon, as that he is not the ſon of an eſquire, nor has 100 l. a year in his own or his wife's right: For he ought not to make himſelf the ſole judge, but give the reaſons at large. *Parker* Ch. J. ſeemed to think the conviction would be good, having followed the words of the ſtatute, and that if the defendant was qualified, he ought to have ſhewn it before the juſtice, being ſummoned for that purpoſe. *Eyre* J. ſtarted an objection, that it was not the juſtice that had taken upon him to ſay the defendant was not qualified; but only the witneſs: for the conviction runs, that the witneſs being ſworn ſaith, that the defendant *being a perſon no way qualified* did ſuch a day keep a greyhound; ſo that it appears, the witneſs has given the law to the juſtice, and takes upon himſelf to judge of the defendant's qualifications, and the juſtice is only made uſe of as an inſtrument, to reduce the opinion of the witneſs into a conviction. By *Parker* C. J. the *being not qualified* ſhould be the concluſion of the juſtice, and not the words of the witneſs; for he ought not to ſwear generally a man is not qualified, and ſuch a general proof will not be good: This is only an invention, to ſupport a convicton in general terms, which would be bad if the particular facts were alledged. *Pratt* J. Where the juſtices have a ſummary juriſdiction, and no appeal lies (as in this caſe), we muſt keep them up ſtrictly to the law; and I ſhould be glad if we could make them ſet out the whole particularly. The caſe was adjourned. And afterwards *Pengelly* ſerjeant mentioned two caſes, *Q.* and *Hayward*, *E.* 12 *An.* There it was, *not being qualified, licenſed, or authoriſed to keep any engine*, and it was quaſhed. The other was the ſame term, and quaſhed, becauſe no qualifications were mentioned. And towards the end of the term this conviction was quaſhed; and the principal reaſon declared to be, becauſe the witneſſes had taken upon themſelves, to judge of the qualifications. *Str.* 66.

And in the caſe of *K.* and *Hill*, *H.* 12 *G.* the defendant was convicted, for unlawfully keeping a lurcher and a gun to kill and deſtroy the game, *not being qualified by the laws of this realm, ſo to do.* And the conviction being removed into the king's bench, by certiorari, was quaſhed; becauſe it was only averred generally, that he was not qualified, and did not aver that the defendant had not the

particular

particular qualifications mentioned in the ſtatute, as to degree, eſtate, and the reſt. *L. Raym.* 1415.

And in the caſe of *Bluet* and *Needs*, *E.* 9 *G.* 2. In an action *qui tam* on the ſtatute, it was objected, that it is not ſufficient to ſay he was not qualified, without ſhewing he had not 100l. a year, nor other eſtate which makes a qualification. By the court, It is ſufficient if the words of the ſtatute be purſued; and the defendant may come in and ſhew his qualification. Indeed, *convictions* have been quaſhed for not ſetting forth what was the want of qualification, becauſe it muſt be made out before the juſtice, that he had no ſuch qualification as the law requires; and therefore the juſtice ought to return, that he had no manner of qualification, before he can convict the defendant. *Comyns*, 522.

And in the caſe of *K.* and *Bryan*, *M.* 12 *G.* 2. which was a conviction on the gin act, exception was taken, that there was no averment, that it was not ſold to be uſed in medicine: and the caſes on the game act were mentioned, where in convictions it is neceſſary to exclude all the qualifications for killing game. On the other hand, it was inſiſted that the reaſon of that was, becauſe thoſe were in the enacting clauſe, whereas this about medicine comes by way of proviſo, and is by way of defence to be ſhewn on the defendant's part. And for that purpoſe was cited *K.* and *Theed*, *M.* 11 *G.* where in a conviction for obſtructing an exciſe officer on the 8 *An.* *c.* 9. it was objected, that it not being averred to be in the day, it ſhould have been ſhewn that there was a conſtable preſent, which is made neceſſary in the night; but it was held to be well, and that its being in the night ſhould have been ſhewn on the defendant's part. And by the court, This is brought within the general enacting clauſe: and the true diſtinction is, where the extenuation comes in by way of proviſo, or exception. And the conviction was confirmed. *Str.* 1101.

Finally, in the caſe of *K.* and *Jarvis*, *H.* 30 *G.* 2. The conviction did ſet forth, that the defendant did unlawfully keep and uſe, and had in his cuſtody and poſſeſſion, one ſetting dog and ſetting net, for the deſtruction of the game; and that he the ſaid *Jarvis* was not then any wiſe qualified, impowered, licenſed, or authorized, by or according to the laws of this realm to kill game. It was moved to quaſh this conviction. And by lord *Mansfield* Ch. J. It is now ſettled by the uniform courſe of authorities, that the qualifications muſt be all negatively

ſet out: Otherwiſe the juſtices have no juriſdiction over the perſons killing game, or keeping dogs or engines for the deſtruction of it. The *obiter* ſaying in 10 *Mod.* (if it was a book of better authority than it is) would ſignify nothing, when the determinations are the other way. There is a great difference between the purview of an act of parliament, and a proviſo in an act of parliament. In the caſe of *K.* and *Mariot*; where the witneſs ſwears only generally, it was holden inſufficient: And the juſtices who convict upon the evidence of the witneſs, can have no other or further ground to go upon, than what the witneſs ſwears. In the caſe of *K.* and *Hill*, it is the very point eſtabliſhed and ſettled, that the general averment is not ſufficient, and that it muſt be averred that the defendant had not the particular qualifications mentioned in the ſtatute. In the caſe of *Bluet Qui tam*, and *Needs*; the general averment of the defendant's not being qualified, was holden to be ſufficient upon an action, though inſufficient upon a conviction: The diſtinction is obvious between an action and a conviction. In the preſent caſe, the witneſs ſwears generally, that the defendant was not qualified. The juſtices adjudge it generally, only. The ſtream can go no higher than the ſpring head. So the concluſion, which the juſtices draw from the teſtimony of the witneſs, muſt be as general as that teſtimony. In the caſe of *K.* and *Pickles*, *M.* 19 *G.* 2. it was laid down as a rule, that the want of the particular qualifications required by the 22 & 23 *C.* 2. *c.* 25. ought to be negatively ſet out in convictions. And the only queſtion there was, whether it was neceſſary to add the inferred or argumentative qualification, collected from the 5 *An.* *c.* 14. but not mentioned in the 22 & 23 *C.* 2. *c.* 25. of his not being lord of a manor. *Exceptio probat regulam:* Nor was the general rule at all doubted or diſputed in that caſe. In indictments upon the 8 & 9 *W.* *c.* 26. for having a coining preſs, every thing which ſhews that the defendant had no authority, muſt be negatively ſet out: And ſo it was done, in the indictment of *Bell*, which was lately argued before all the judges. I take the point to be ſettled, by the conſtant tenor of all the authorities; and I think upon very good reaſon (if there was need to enter into the reaſon at large, after it has been fully ſettled already).——Mr. juſtice *Deniſon* concurred, and ſaid, it was a clear caſe, and that it was fully ſettled and eſtabliſhed, that in theſe convictions, the want of the particular

cular qualifications mentioned in the 22 & 23 *C.* 2. ought to be negatively ſet out. If not, the juſtices have no juriſdiction to convict the defendant as an offender. And the evidence and adjudication ought both of them to be, that he hath not the qualifications which are ſpecified in that act, nor any of them. Indeed you are not obliged to go further than the words of this act of parliament of the 22 & 23 *C.* 2. and that was the caſe of *K.* and *Pickles*. But however, in that caſe, the preſent point was eſtabliſhed, and taken to be indiſputable.—— Mr. juſtice *Foſter* alſo concurred, and ſaid, that on negative acts of parliament, the point is fully ſettled and eſtabliſhed, that the particular qualifications mentioned in the purview of them, muſt be negatively ſpecified in convictions made upon them.——And by the court unanimouſly, the conviction was quaſhed. *Burrow. Mansfield.* 148.

Shall keep or uſe] *H.* 8 *G. K.* and *Filer*. Conviction for *keeping* a lurcher to deſtroy game, not being qualified. Exception was taken, that it was not ſhewn he *uſed* the dog to deſtroy game; and it may be he only kept it for a gentleman who was qualified, it being common to put out dogs in that manner. But by the court, The ſtatute is in the disjunctive, *keep* or *uſe*; ſo that the bare *keeping* a lurcher is an offence; and ſo it was determined in the caſe of *K.* and *King*, *E.* 3 *G.* which was a conviction for keeping a gun; and it was not doubted by the court, whether the *keeping* was not enough to be ſhewn, but the only queſtion they made was, whether a gun was ſuch an engine as is within that ſtatute; and in that caſe a difference was taken, as to the keeping a *dog*, which could only be to deſtroy the game; and the keeping a *gun*, which a man might do for the defence of his houſe. And the conviction was confirmed. *Str.* 496.

Uſe] In the caſe of *K.* and *King* aforeſaid, *Parker* Ch. J. ſaid, that walking about with intent to kill game, is evidence of *uſing* the inſtrument for that purpoſe. *Seſſ. C. V.* 1. 88.

Any greyhounds, ſetting dogs, hays, lurchers, tunnels, or any other engines] *H.* 13 *G.* 2. *Hooker* and *Wilks*. An action was brought on the 8 *G. c.* 19. for uſing a *hound* to deſtroy game. And after a verdict for the plaintiff, the judgment was arreſted; for the ſtatute of the 5 *An. c.* 14 has not the word *hound*, and the words *other engines* come after *nets*, and are applicable only to inanimate things. And this being a penal law, cannot be extended.

The ſtatute of the 22 & 23 *C.* 2. *c.* 25. has indeed general words *or any other dogs to deſtroy game*; but this is not a conviction on that ſtatute. *Str.* 1126.

Nor indeed could it have been a conviction on that ſtatute, for any penalty in certain for killing and deſtroying the game; for the ſtatute of the 22 & 23 *C.* 2. doth not inflict a general penalty upon perſons unqualified who ſhall kill and deſtroy the game; but only declares, who ſhall or ſhall not be deemed unqualified; and gives power to lords of manors and their gamekeepers to ſeize the dogs, nets, and other engines of ſuch unqualified perſons. But if the defendant did kill the game, and had the ſame in his cuſtody; he might have been proſecuted for the penalty of 20 s. for ſuch offence, by the ſtatute of the 4 & 5 *W.* hereafter following.—But then the conſequence of all this will be, that it is not penal barely to *keep* a *hound* on this ſtatute of the 5 *An.* but if any unqualified perſon ſhall do ſo, the gamekeepers or others, authorized by a juſtice's warrant, may ſeize and keep or deſtroy the ſame, by the aforeſaid ſtatute of the 22 & 23 *C.* 2.

So in the caſe of *Reaſon* and *Liſle*, *T.* 11 *G.* 2. On an action upon the ſtatute, the plaintiff declared, that the defendant kept and uſed a *dog* to deſtroy the game. It was objected, that he ought to have expreſſed what ſort of dog; for it might be a maſtiff, or a lap dog, which might chance to kill game; and the ſtatute only mentions greyhounds, ſetting dogs, and lurchers; and this being a penal law, ſhall not be extended by equity. And of this opinion was the court. And judgment was arreſted. *Comyns*, 576.

Any other engines] *T.* 11 *G.* 2. *K.* and *Gardiner*. It was moved to quaſh a conviction, for unlawfully having and keeping a *gun*, being an engine or inſtrument for deſtroying the game. And it was urged, that this is no ſufficient charge within this act, or any other of the laws relating to the game: for it is not ſaid, that the defendant *uſed* the gun for the deſtruction of game; and a gun is not an inſtrument ſo far appropriated to killing game, as that it is criminal for a perſon to have one in his cuſtody only: And it would have been altogether as well, if it had been ſaid that the defendant had in his cuſtody a *cane* for the deſtruction of the game, which may poſſibly be uſed for that purpoſe. The only offences intended to be prevented by the act are, the keeping of engines appropriated to, and which

which can only be uſed in, the deſtroying of game. A gun is an engine, not for killing the game, but for the defence of a man's houſe. And the whole court were clearly of opinion, that this conviction is not good. For (as they argued) if the ſtatute is to be conſtrued ſo largely, as to extend to the bare having of any inſtrument, that may poſſibly be uſed in deſtroying game, it will be attended with very great inconvenience; there being ſcarce any tho' ever ſo uſeful, but what may be applied to that purpoſe. And tho' a gun may be uſed in deſtroying game, and when it is ſo, doth then fall within the words of the act; yet as it is an inſtrument proper, and frequently neceſſary to be kept and uſed for other purpoſes, as the killing of noxious vermin, and the like, it is not the having a gun, without applying it in the deſtruction of game, that is prohibited by the act: but otherwiſe it is of lurchers, harepipes, and ſuch like, which are peculiarly fitted or diſpoſed for killing game. The bare *keeping* of theſe for the purpoſe of killing game, is ſufficient to convict an offender, and it will be incumbent upon the defendant himſelf to prove, that he kept them for other purpoſes. And the conviction therefore was quaſhed. After which, *Strange* ſolicitor general ſaid that in the caſe of *K.* and *King*, *E.* 3 *G.* Lord *Macclesfield* ſaid, that he was in the houſe of commons when this act was made, and he himſelf objected to the inſerting of the word *gun* therein, becauſe it might be attended with great inconvenience. *Andr.* 255. *Seſſ. C. V.* 2. 204. *Str.* 1098.

And ſhall be thereof convicted] *H.* 6 *G. K.* and *Johnſon.* Conviction for keeping a gun, not being qualified. Exception was taken, that here was not a reaſonable *ſummons*; for it was made on the fifth of *October*, to appear the ſame day, which might be impoſſible upon account of diſtance, or the ſummons being ſerved late, and his witneſſes might not be got together on ſo ſhort a warning: then it is to appear *at the pariſh aforeſaid*, whereas there are two pariſhes mentioned before; ſo the man may have gone to one, whilſt they were convicting him at the other. It was anſwered, that the defendant appeared at the time and made defence, ſo that cures all defects in the ſummons. And by the court, The anſwer is right. *Str.* 261.

H. 5 *G.* 2. *K.* and *Heber.* On a rule to ſhew cauſe, why an information ſhould not be granted againſt the defendant

fendant Mr. *Heber*, a juſtice of the peace, for convicting two perſons, *Hargrave* and *Lancaſter*, for killing game not being qualified; the complaint in relation to *Hargrave* was, that the defendant ſent his warrant for him, by which he was arreſted, without any previous information upon oath; in relation to *Lancaſter*, the complaint was, that he happening to be preſent at the time *Hargrave* was convicted, the defendant took that opportunity of convicting him alſo, without giving him any previous ſummons, by which he might prepare himſelf for his defence. The court (the chief juſtice being abſent) were very clear, that an information ought to go againſt the defendant for his behaviour in relation to *Lancaſter*; for they ſaid, it was a moſt known rule of common juſtice, that no man ought to be convicted of an offence, till he has previous notice given him of the charge, that he may be prepared to put in his anſwer to it. Accordingly the rule, as to him, was made abſolute. As to *Hargrave*, judge *Probyn* thought, that the rule, with reſpect to him alſo, ought to be made abſolute. He ſaid, a warrant deprives a man of his liberty; and therefore a ſummons ought only to iſſue, and not a warrant, without an information upon oath. The other two judges did not think this a ſufficient cauſe for granting an information. And therefore the rule, with reſpect to *Hargrave*, was diſcharged.——In this caſe, the court would not proceed to make a rule to ſhew cauſe, until the convictions were removed thither by certiorari: for, they ſaid, if there was no conviction, there ought to be no information; and if there was a conviction, this ought to appear by the record. 2 *Barnardiſt.* 34, 77, 101.

On the oath of one credible witneſs] *H.* 9 *G. K.* and *Gage*. The defendant was convicted for uſing a greyhound in killing hares. Exception was taken to the conviction, that the ſtatute hath only given the juſtices juriſdiction to convict upon the oath of one or more credible witneſſes, whereas this was upon his own confeſſion, which it was inſiſted the juſtices had no power to take. But by the court, The conviction muſt be confirmed. The intent of mentioning the oath of one witneſs, was only to direct the juſtices, that they ſhould not convict on leſs evidence: ſuppoſe the confeſſion had not been before the juſtices, but before two witneſſes who had ſworn it; that would be convicting him on the oaths of witneſſes, and yet the evidence would not be ſo ſtrong as this. Here the juſtices had

had a better evidence, than the oath of any ſingle witneſs; and it is a monſtrous thing to ſay, that a better ſort of evidence ſhall not do. *Str.* 546.

Credible witneſs] *M.* 2 *G.* 2. *K.* and *Stone.* A conviction was quaſhed, becauſe the informer was the witneſs; divers convictions having been quaſhed for the ſame reaſon before. L. *Raym.* 1545. The ſame adjudged in the caſe of *K.* and *Blaney*, *T.* 11 *G.* 2. *Andr.* 240. And in the ſtatute of the 2 *G.* 3. *c.* 19. it is recited, that in proſecutions on the act of 8 *G. c.* 19. in the courts at *Weſtminſter*, where a part of the penalty is given to the poor of the pariſh, the *inhabitants* of ſuch pariſh had heen diſallowed to give evidence; and therefore in that caſe, to remedy the ſame, the act gives the whole penalty to the proſecutor, in order to enable the inhabitants to give evidence.

Before one juſtice] *H.* 12 *G. K.* and *Buck.* It was moved, to quaſh an *indictment* for killing a hare, this not being a matter indictable, the ſtatute appointing a ſummary proceeding before juſtices of the peace; and a caſe was cited *K.* and *James*, *T.* 1 *G.* where an indictment for keeping an alehouſe was quaſhed, becauſe the ſtatute of the 3 *C. c.* 3. had directed a particular remedy. And by the court, The indictment muſt be quaſhed. *Str.* 679.

Shall forfeit 5 *l.*] *T.* 10 *An. Q.* and *Matthews.* On a conviction, exception was taken, that the perſon was charged with ſo many 5 l. as he had killed hares in the ſame day. And the court was of opinion, that the offence, for which the ſtatute gave the forfeiture, was the keeping dogs and engines, and not killing the hares. If a man not qualified goes a hunting, and kills never ſo many hares on the ſame day, he would forfeit but one 5 l. for it is but one offence; but if a man keeps dogs, and goes a hunting ſeveral days, and kills hares, if it was thus laid, that he ſuch a day kept dogs and killed, and then again ſuch a day, by laying thus ſeverally, the offence is ſevered, and he ſhall forfeit 5 l. for each offence. 10 *Mod.* 26.

So in the caſe of *Marriot* and *Shaw*, *E.* 4 *G.* where the defendant was convicted, that upon ſuch a day he kept and uſed a greyhound to kill and deſtroy the game at ſuch a place, that on the ſame day be kept and uſed a greyhound to kill and deſtroy the game at another place, and

and ſo at a third place, and killed ſeveral hares at the ſaid ſeveral places; it was adjudged by the court, that this being all done on the ſame day, was only one offence; for this ſtatute does not give 5 l. for every hare; but only ſays, if any unqualified perſon ſhall keep or uſe any grey-hounds, or the like, to kill and deſtroy the game, he ſhall forfeit 5 l. *Comyns*, 274.

To the poor of the pariſh where the offence was committed] In ſome places a man may ſtand in one pariſh (or county), and ſhoot into two or three: in ſuch caſe, the place where the offence was committed is, where the party ſtood when he ſhot, and not where the object was which he ſhot at. *Shaw.* 339. *M.* 3. *W. K.* and *Alſop.*

By diſtreſs] *T.* 9 *G. K.* and *Burchet.* The court ordered an attachment (unleſs cauſe ſhewn) againſt the town clerk of *Guildford*, and a defendant convicted on the game act, for granting and ſuing out a replevin of goods diſtrained for the penalty. But on ſhewing cauſe the next term, when *Eyre* J. only was preſent, he diſcharged the rule, becauſe it was only a contempt to the inferior juriſdiction of the juſtices, and in that caſe the king's bench never interpoſes. *Str.* 567.

But in the caſe of the king againſt the ſheriff of *Leiceſterſhire* and others, *M.* 2 *G.* 2. An attachment was moved for againſt the defendants, for replevying three horſes, which were ſeized as forfeited upon a juſtice's warrant, they being driven in a waggon contrary to act of parliament. The court tho' they would not grant an attachment, yet made a rule to ſhew cauſe why an information ſhould not go. And on ſhewing cauſe, the court thought there was enough to excuſe the ſheriff; but granted it againſt *Parſons* whoſe horſes were ſeized, becauſe he knew that the juſtice had granted this warrant; but it did not appear that the ſheriff did. 1 *Barnardiſt.* 110.

And in the caſe of *K.* and *Monkhouſe*, *E.* 16 *G.* 2. The court granted an attachment againſt the under-ſheriff of *Cumberland*, for granting a replevin of goods diſtraining on conviction for deer-ſtealing. *Str.* 1184.

For want of diſtreſs, to be ſent to the houſe of correction] *T.* 12 *G. Hill* and *Bateman.* Before *Raymond* Ch. J. at *Weſtminſter.* The defendant *Bateman*, being a juſtice of the peace, had convicted the plaintiff for deſtroying game, and though (as it was proved) the plaintiff had effects of his

his own, which might have been diſtrained, which were ſufficient to anſwer the penalty he had incurred, yet the defendant ſent him immediately to *Bridewell*, without endeavouring to levy the penalty upon his goods: and an action of treſpaſs and falſe impriſonment being brought againſt *Bateman* for this commitment, the chief juſtice was of opinion, that the action well lay. *Str.* 710.

And [*no*] certiorari *ſhall be allowed to remove the conviction or other proceedings on this act, unleſs the party convicted ſhall before the allowance thereof become bound* (H) *to the proſecutor in* 50*l. with ſuch ſureties as the juſtice ſhall think fit, to pay full coſts and charges in* 14 *days after the conviction* [*confirmed*], *or* procedendo *granted. And in default thereof, the juſtice ſhall proceed in execution of the conviction in ſuch manner as if no* certiorari *had been awarded.* 5 An. c. 14. ſ. 2.

Note; The word [*no*] is inſerted inſtead of the words [*if any*] which are in the act, ſince that word ſeemeth neceſſary to make up the ſenſe; and the word [*confirmed*] is added for the like reaſon. And indeed there have been too many inadvertencies in the drawing up of this act; for there is falſe grammar in no fewer than ſix places, beſides other miſtakes.

Search for game, with 20 s. penalty for having it.

9. *And the conſtable, authoriſed by a juſtice's warrant, ſhall enter into and ſelarch (in ſuch manner and with ſuch power as in caſe where goods are ſtolen, or ſuſpected to be ſtolen) the houſes, outhouſes, or other places belonging to ſuch houſes of ſuſpected perſons not qualified: And if any hare, partridge, pheaſant, pigeon, fiſh, fowl, or other game, ſhall (upon ſuch ſearch, or otherwiſe) be found the offender ſhall be carried before a juſtice; and if ſuch perſon do not give a good account how he came by the ſame, ſuch as ſhall ſatisfy the ſaid juſtice, or elſe ſhall not in ſome convenient time, to be ſet by the juſtice, produce the party of whom he bought the ſame, or ſome other credible perſon to depoſe upon oath ſuch ſale thereof, he ſhall be convicted by the ſaid juſtice of ſuch offence, and upon ſuch conviction ſhall forfeit for every hare, partridge, pheaſant, fiſh, fowl, or other game any ſum not under* 5 *s. and not exceeding* 20 *s. half to the informer, and half to the poor, by diſtreſs; for want of diſtreſs, to be committed to the houſe of correction not more than one month, nor leſs than ten days, there to be whipt and kept to hard labour.* 4 & 5 W. c. 23. ſ. 3.

Or other game] Rabbets killed in a private warren, are not game within this act. L. *Raym.* 151.

For

For every hare, fiſh, fowl, or other game] Theſe words very penal.

And if any perſon ſo produced, or charged with the ſaid offence, ſhall not before the juſtice give ſuch evidence of his innocence as aforeſaid, he ſhall be convicted thereof in the ſame manner as the perſon firſt charged therewith, and ſo from perſon to perſon till the firſt offender be diſcovered. id. ſ. 3.

And no certiorari *ſhall be allowed to remove any conviction, unleſs the party firſt become bound to the proſecutor in* 50 l. *with ſuch ſufficient ſureties as the juſtice ſhall think fit, to pay within a month after the conviction confirmed, or* procedendo *granted, full coſts and charges; and in default thereof, the juſtice to proceed to the execution of the conviction.* id. ſ. 7.

Carriers and others having game in their poſſeſſion.

10. *If any higler, chapman, carrier, innkeeper, victualler, or alehouſekeeper, ſhall have in his cuſtody or poſſeſſion or ſhall buy, ſell, or offer to ſell any hare, pheaſant, partridge, moor, heath-game or grouſe, unleſs ſuch game in the hands of ſuch carrier be ſent up by ſome perſon qualified;* (or, *if any perſon whatſoever, whether qualified or not, ſhall ſell, expoſe, or offer to ſale any hare, pheaſant, partridge, moor, heath-game, or grouſe,* 28 G. 2. c. 12.) *he ſhall be carried before a juſtice where the offence is committed* (I); *and being convicted thereof (in three months after the offence) on view, or oath of one witneſs, he ſhall forfeit for every hare, pheaſant, partridge, moor, heath-game, or grouſe, the ſum of* 5 l. *half to the informer, and half to the poor, by diſtreſs* (K): *for want of diſtreſs, to be committed* (L) *to the houſe of correction for the firſt offence three months, and for every other offence four months.* 5 An. c. 14. ſ. 2.

And no certiorari *ſhall be allowed to remove the conviction or other proceedings, unleſs the party convicted ſhall before the allowance thereof, become bound to the proſecutor in* 50 l. *with ſuch ſureties as the juſtice ſhall think fit, to pay full coſts in* 14 *days after the conviction confirmed, or* procedendo *granted. And in default thereof the juſtice ſhall proceed in execution of the conviction, in ſuch manner as if no* certiorari *had been awarded.* 5 An. c. 14. ſ. 2.

And if any hare, pheaſant, partridge, moor, heath-game, or grouſe, ſhall be found in the ſhop, houſe, or poſſeſſion of any poulterer, ſaleſman, fiſhmonger, cook, or paſtry cook, or of any perſon not qualified in his own right to kill game, or intitled thereunto under ſome perſons ſo qualified, it ſhall be deemed an expoſing thereof to ſale. 9 An. c. 25. ſ. 2. 28 G. 2. c. 12.

Found

Found in the ſhop] This muſt be underſtood of proof that it was found. *Q.* and *George*, 6 Mod. 57.

And any juſtice of the peace, and lord within his manor, may take away any ſuch hare, pheaſant, partridge, moor, heath-game, or grouſe, or any other game, from any ſuch higler, chapman, innkeeper, victualler, or carrier or any other perſon not qualified, which ſhall be found in his cuſtody or poſſeſſion. 5 An. c. 14. ſ. 4.

And any perſon that ſhall deſtroy, ſell, or buy any hare, pheaſant, moor, heath-game, or grouſe, and ſhall in three months make diſcovery of any higher, chapman, carrier, innkeeper, alehouſekeeper, or victualler, that hath bought or ſold, or offered to buy or ſell, or had in their poſſeſſion any hare, pheaſant, partridge, moor, heath-game, or grouſe, ſo as any one ſhall be convicted; ſuch diſcoverer ſhall be diſcharged of the pains and penalties hereby enacted for killing or ſelling ſuch game, and ſhall receive the ſame benefit as any other informer. 5 An. c. 14. ſ. 3.

11. And whereas great miſchiefs do enſue by inferior tradeſmen, apprentices and other diſſolute perſons, neglecting their trades and employments, who follow hunting, fiſhing and other game to the ruin of themſelves, and damage of their neighbours, therefore if any ſuch perſon ſhall preſume to hunt, hawk, fiſh, or fowl (unleſs in company with the maſter of ſuch apprentice duly qualified); he ſhall not only be ſubject to the other penalties, but if he be proſecuted for treſpaſs, in coming on any perſon's land, and be found guilty, the plaintiff ſhall not only recover damages againſt him, but full coſts. 4 & 5 *W.* c. 23. ſ. 10. Inferior tradeſmen killing game.

For no man can come upon another man's ground to kill game, without being liable to an action of treſpaſs. 2 *Bac. Abr.* 613.

But if he is qualified to kill game, and the damage found ſhall be under 40 s. he ſhall in ſuch caſe pay no more coſts than damages. *id.*

But an unqualified perſon, ſo treſpaſſing, ſhall pay full coſts by this ſtatute.

12. By the yearly mutiny acts, if any officer or ſoldier ſhall, without leave of the lord of the manor under his hand and ſeal, deſtroy any hare, coney, pheaſant, partridge, pigeon, or other fowl, poultry, or fiſh, or his majeſty's game, and be convicted thereof, on oath of one witneſs, before one juſtice; every officer ſo offending ſhall forfeit 5 l. to the poor, and the commanding officer upon the place, for every offence committed by any ſoldier under his Soldiers.

his command, ſhall forfeit 20s. in like manner. And if, upon conviction by the juſtices, and demand thereof made by the conſtable or overſeers of the poor, he ſhall not in two days pay the ſaid penalties, he ſhall forfeit his commiſſion.

The ſtatute of 33 *H.* 8. concerning guns.

13. Here next followeth the ſtatute of the 33 *H.* 8. *c.* 6. concerning guns: by which it is enacted as follows;

(1) No perſon, except he in his own right, or in the right of his wife, or ſome other to his uſe, have lands, tenements, fees, annuities, or offices, to the yearly value of 100l. ſhall ſhoot in any croſs bow, hand-gun, hagbut, or demihake, otherwiſe than as hereafter is expreſſed; on pain of 10l. to be levied and diſpoſed of in any of the three ways hereafter mentioned.

(2) And no perſon, of what eſtate or degree ſoever, ſhall ſhoot in, carry, keep, uſe, or have in his houſe or elſewhere, any hand-gun, not being in the ſtock and gun of the length of one yard; or any hagbut or demihake, not being in the ſtock and gun of the length of three quarters of a yard; on the like pain of 10l.

(3) And every perſon having 100l. a year as above, may ſeize every ſuch croſs bow; and every ſuch hand-gun, hagbut, and demihake being ſo deficient in length; and he may keep the croſs bow to his own uſe; but he ſhall in 20 days after ſeizure break and deſtroy the hand-guns, hagbuts, and demihakes, on pain of 40s. in like manner, for every gun ſo ſeized, and not broken and deſtroyed; and the ſame ſo broken and deſtroyed he may keep to his own uſe.

(4) And no perſon not being qualified as above, ſhall carry or have in his journey, going or riding in the king's highways or elſewhere, any croſs bow bent, or gun charged, or furniſhed with powder, fire, or touch for the ſame, except in time and ſervice of war; on pain of 10l. in like manner.

(5) And no perſon ſhall ſhoot with any hand-gun, demihake, or hagbut, at any thing at large, within any city, borough, or market town, nor within a quarter of a mile of the ſame, except it be at a butt or bank of earth in place convenient, or for defence of his perſon or houſe; on pain of 10l. in like manner.

(6) And no perſon ſhall command his ſervant to ſhoot in any croſs bow, hand-gun, hagbut, or demihake, at any deer, fowl, or other thing, except only at a butt or bank of earth, or in time of war; on pain of 10l. in like manner.

(7) But

(7) But all gentlemen, yeoman, and ſervingmen of lords, knights, eſquires, and gentlemen; and all inhabitants of cities, boroughs, and market towns, may ſhoot with any hand-gun, demihake, or hagbut of the length as above, but not under, at any butt or bank of earth, in place convenient.

And every ſuch lord, knight, eſquire, gentleman, and inhabitant of cities, boroughs, and market towns, may have and keep in their houſes any ſuch hand-gun, hagbut, or demihake, of the length aforeſaid, to the intent only to uſe or ſhoot in the ſame at a butt or bank of earth.

And every perſon inhabiting in a houſe two furlongs from any city, borough, or town, may keep and have in his houſe, for the only defence of the ſame, hand-guns, hagbuts, and demihakes, of the length abovementioned; and may uſe and exerciſe to ſhoot in the ſame at any butt or bank of earth near to his houſe, and not otherwiſe.

And except makers and ſellers of the ſame, having them for that purpoſe only, and being of the length above.

Alſo this act ſhall not extend to perſons inhabiting within five miles of the ſea; ſo that they ſhoot not at any deer, heron, ſhovelard, pheaſant, partridge, wild ſwine, or wild elk.

Alſo this act ſhall not extend to ſervants carrying the ſame by their maſters command, ſo that they ſhoot not at any game.

Nor to any owner of a ſhip for having or keeping them, of what length ſoever, to be uſed in the ſhip only.

(Nor to perſons licenſed by the ſeſſions to ſhoot in hand-guns or birding-pieces, at crow, chough, pye, rook, ring-dove, jey, or ſmaller birds, for hawks-meat only; ſo as they ſhoot no game, and ſo that they ſhoot not within 600 paces of a hernery, nor within a hundred paces of a pigeon houſe, nor in another man's park, foreſt, or chaſe. 1 *J. c.* 27. *ſ.* 7.

And except the ſheriff, who may carry a gun in the execution of his office. 5 *Co.* 72.)

(8) And if any perſon ſee or find any one offending or doing contrary to this act, he may arreſt, and bring or convey him to the next juſtice of the county where he is found offending; who ſhall upon *due examination and proof* thereof made before him, by his diſcretion have full power to commit (M) the offender to the next gaol, there to

remain till ſuch time as the ſaid penalty or forfeiture ſhall be truly contented and paid by the ſaid offender; half to the king, and half to the firſt bringer or conveyor of the ſaid offender to the juſtice.

Which *due examination and proof* aforeſaid, is intended not to be by a jury, but by witneſſes. 1 *Ventr.* 33.

Mr. *Dalton* ſays, foraſmuch as in this caſe the juſtice hath the whole matter committed to himſelf, and the offenders remain convict upon his examination and proof of witneſs made before him; therefore he ought to be circumſpect in his examination, as alſo in his mittimus; and farther to make a record (N) of the matter, in writing under his hand, and alſo to ſend the eſtreat of it into the exchequer, whereby the king's duty may be levied. *Dalt. c.* 47.

In the conviction, it is not ſufficient to ſay generally that he had not 100 l. a year, but the time muſt be certainly alledged, namely, that the defendant on the day and year aforeſaid (when the offence was committed) had not 100 l. a year. 3 *Mod.* 280.

And upon ſuch conviction, it hath been adjudged, that a writ of error doth not lie. 1 *Ventr.* 33.

(9) Alſo the juſtices in ſeſſions may inquire of, hear and determine the ſaid offences, ſo that no leſs fine than 10 l. be aſſeſſed upon *preſentment* and conviction, to be levied in ſuch caſe to the king's uſe only.

And this may alſo be upon *indictment*. Dalt. c. 47.

And if the jury ſhall wilfully conceal any the ſaid offences, the court may charge another jury to inquire of ſuch concealment; and if it be ſo found, the firſt jury ſhall forfeit to the king every one 20 s.

(10) Alſo the leet may inquire of, hear and determine the ſame; in which caſe, half the forfeiture ſhall upon preſentment and conviction be levied to the king's uſe; and one moiety of the other half to the owner of the leet, by diſtreſs or action of debt; and the other moiety to him that will ſue in any of the king's courts.

And if the jury ſhall wilfully conceal an offence, the ſteward may charge another jury to inquire of the concealment; and if it be found, the firſt jury ſhall forfeit 20 s. each; half to the owner of the leet, by diſtreſs or action of debt; and half to him that ſhall ſue in any of the king's courts.

(11) But

(11) But no perſon ſhall be proſecuted but within a year, if it is by the king; and within half a year, if by any other perſon. †

V. Laws

† This ſtatute of the 33 *H.* 8. *c.* 6. is undoubtedly in force, and conſequently may be put in execution; nevertheleſs it ſeemeth now to be obſolete, the object thereof being a matter not in any uſe, and the effect of it with reſpect to the game being ſuperſeded as it were by the ſeveral ſubſequent ſtatutes. The original intention was ſolely for the encouragement of the uſe of the long bow. And the progreſs of the matter was as follows:—By the ſtatute of the 19 *H.* 7. *c.* 4. it was thus enacted; The king our ſovereign lord conſidering right well, that in the time of his moſt noble progenitors ſhooting in long bows hath been much uſed in this his realm, whereby honour and victory hath been gotten againſt outward enemies, and the realm greatly defended, and much the more dread among all chriſtian princes by reaſon of the ſame; which ſhooting is now greatly decayed in this realm, foraſmuch as now of late the king's ſubjects greatly delight themſelves in uſing of *croſs bows*, whereby great deſtruction of the king's deer, in foreſts, chaſes, and parks, daily is had and done, and ſhooting in long bows little or nothing uſed, and likely in ſhort ſpace to be loſt and utterly decayed, to the great hurt and infeebling of this realm, and to the comfort of our outward enemies, if remedy be not therefore in due time purveyed; wherefore our ſaid lord the king, willing that his ſubjects in this realm ſhall uſe their long bows after the laudable cuſtom uſed in time of his moſt noble progenitors, to the great honour, ſtrength, and defence of this his realm, by the advice of the lords ſpiritual and temporal and commons in this preſent parliament aſſembled, hath ordained and enacted, That no perſon, without the king's ſpecial licence under his placarde, ſigned and ſealed with his privy ſeal or ſignet, ſhall occupy or ſhoot in any *croſs bow* (unleſs he ſhoot out of an houſe for the lawful defence of the ſame), except he be a lord, or have lands of freehold of 200 marks a year; on pain to forfeit the ſame, with the apparel thereto belonging, to him who ſhall ſeize and take the ſame.—By the 3 *H.* 8. *c.* 13. the qualification was raiſed to 300 marks a year.—Afterwards, when guns came in uſe, it was enacted by the 6 *H.* 8. *c.* 13. as follows: Where the king's ſubjects daily delight themſelves in ſhooting in *croſs bows*, whereby ſhooting in long bows is the leſs uſed, and divers good ſtatutes for reformation of the ſame have been made, and that notwithſtanding many perſons not regarding the penalties of the ſaid ſtatutes, uſe daily to ſhoot in *croſs bows* and *hand-guns*, whereby the king's deer, and of other lords of this his realm are deſtroyed, and ſhall be daily deſtroyed more and more, unleſs remedy therefore be provided; it is enacted, that no perſon ſhall ſhoot in any

V. Laws for preſerving the four footed game in particular.

Which ſaid laws, as hath been ſaid, do ſeem to concern all perſons whatſoever, whether qualified or not.

Now the four footed game, or the game of beaſts, are of three kinds, *viz.*

I. Deer

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croſs-bow or *hand-gun*, on pain of forfeiting the ſame, and alſo 10 l. unleſs he have by the year to the value of 300 marks, with power to the king to licenſe perſons as before,—And the like was enacted by two other ſtatutes in that king's reign (14 & 15 *H.* 8. *c.* 7. and 25 *H.* 8. *c.* 17.) with ſome ſmall variations, not material, repealing the former ſtatutes and the licences granted thereupon, and giving the king power to grant new ones; ſo that they ſeem to have been intended chiefly for the ſake of bringing money into the exchequer by the renewal of licences.—And laſt of all cometh this ſtatute of the 33 *H.* 8. *c.* 6. reciting, Where in the parliament holden in the 25th year of the king's moſt gracious reign, one ſtatute was made for the avoiding and eſchewing of ſhooting in *croſs-bows* and *hand-guns*; ſince the making whereof divers evil diſpoſed perſons, not only preſuming the violation of the ſaid ſtatute, but alſo of their malicious and evil diſpoſed purpoſes have committed divers deteſtable and ſhameful murders, robberies, felonies, riots, and routs, with *croſs-bows*, little ſhort *hand-guns*, and little *haquebuts*, to the great peril and fear of the king's ſubjects; and alſo divers keepers of foreſts, chaſes, and parks, and divers gentlemen, yeomen, and ſerving men, now of late have laid apart the good and laudable exerciſe of the long bow, which always heretofore hath been the ſurety, ſafegard, and continual defence of this realm of England, and an ineſtimable dread and terror to the enemies of the ſame; and now of late the ſaid evil diſpoſed perſons have uſed, and do daily uſe, to ride and go in the king's highways, and elſewhere, having with them *croſs-bows*, and little *hand-guns*, ready furniſhed with quarrels, gunpowder, fire, and touch, to the great peril and fear of the king's ſubjects; for reformation thereof, it is enacted (as is above ſet forth).

Subſequent to this, an act was made, 2 & 3 *Ed.* 6. *c.* 14. which is curious enough, to ſhew the progreſs of fire arms applied to the deſtruction of the game; the ſubſtance of which is this: Whereas an act was made in the 33d year of *H.* 8. for ſome liberty to ſhoot in hand-guns, haques, and haquebuts, by which act nevertheleſs it was provided, that no perſon ſhould ſhoot in any of the aboveſaid pieces, but at a bank of earth, and not to any deer or fowl,

I. Deer.
II. Hares.
III. Conies.

I. Of Deer.

There have been many laws from time to time enacted againſt deer ſtealers; which being not ſo much altered, as inforced by the ſubſequent ſtatutes, except only in increaſing the penalties, it may be proper to inſert them all in their order; and the rather, becauſe an offender, as it ſeemeth, may ſtill be convicted upon any one of them; and it is generally provided, that ſuch conviction upon one ſtatute, ſhall be as a bar to all the reſt.

1. The firſt ſtatute is in the 3 *Ed.* 1. *c.* 20. which enacts, that if *treſpaſſers in parks* be thereof attainted at the Three years impriſonment and fine.

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fowl, unleſs the party might diſpend 100 l. a year, foraſmuch as the ſaid act having been deviſed, as it was then thought, for neceſſary exerciſe, tending to the defence of the realm, is grown ſince to the maintenance of much idleneſs, and to ſuch a liberty, as not only dwelling houſes, dove coats, and churches, be daily damaged by the abuſe thereof, by men of light converſation, but alſo there is grown a cuſtomable manner of ſhooting of *hailſhot*, whereby an infinite ſort of fowl is killed, and much game thereby deſtroyed, whereby alſo the meaning of the ſaid ſtatute is defrauded, for that the ſaid uſe of *hailſhot* utterly deſtroyeth the certainty of ſhooting, which in wars is much requiſite; it is therefore enacted, that no perſon, under the degree of a lord of parliament, ſhall ſhoot in any hand-gun within any city or town at any fowl or other mark, upon any church, houſe, or dove-coat, nor ſhall any perſon ſhoot in any place any *hailſhot*, or any more pellets than one at one time; on pain of 10 l. and impriſonment for 3 months.

This act continued in force until the 6 & 7 *W.* *c.* 13. which enacts, Whereas by an act made in the 2 & 3 *Ed.* 6. it was ordained, that no perſon under the degree of a lord of parliament ſhould ſhoot in any place any hailſhot, or any more pellets than one at one time, on pain of 10 l. and impriſonment for 3 months; which act, however uſeful in thoſe days, hath not for many years laſt paſt been put in execution, but became uſeleſs and unneceſſary; yet nevertheleſs ſeveral malicious perſons have of late proſecuted ſeveral gentlemen, qualified to keep and uſe guns upon the ſaid act; for remedy thereof, be it enacted, that the ſaid act ſhall be and is hereby repealed.

But the aforeſaid act of the 33 *H.* 8. *c.* 6. continues, in force, altho' the object thereof doth not now exiſt.

ſuit of the party, great and large amends ſhall be awarded according to the treſpaſs, and they ſhall have three years impriſonment, and after ſhall make fine at the king's pleaſure (if they have whereof,) and then ſhall find good ſurety that after they ſhall not commit the like treſpaſs: and if they have not whereof to make fine, after three years impriſonment, they ſhall find like ſurety; and if they cannot find like ſurety, they ſhall abjure the realm. And if none ſue within the year and day, the king ſhall have the ſuit.

Treſpaſſers] This is, when a man either chaſeth in a park, or endeavours to kill ſome of the game thereof. 2 *Inſt.* 199.

In parks] This act, becauſe it is very penal, is to be underſtood, not of a nominal park erected without warrant, but of a lawful park only, whereunto three things are required, 1. A liberty, either by grant or preſcription. 2. Incloſure, by pale, wall or hedge. And 3. Beaſts ſavages of the park. 2 *Inſt.* 199.

They may be lawfully reſiſted.

2. The next ſtatute is that intitled *De malefactoribus in parcis*, 21 Ed. 1. ſt. 2. which enacts, that if any foreſter, or parker, ſhall find any treſpaſſers wandring within his liberty, intending to do damage therein, and that will not yield themſelves after hue and cry made to ſtand unto the peace, but do continue their malice, and diſobeying the king's peace do flee, or defend themſelves with force and arms, altho' ſuch foreſter, parker, or their aſſiſtants, do kill ſuch offenders, they ſhall not be troubled upon the ſame.

By night, or diſguiſed, and concealing the ſame, felony.

3. The next ſtatute makes hunting by night, or in diſguiſe, and concealing the ſame, felony; but within the benefit of clergy; as follows:

When *information* ſhall be made, of any unlawful hunting in any *foreſt or park*, by night, or with painted faces, to any of the king's counſel, or to a juſtice of the peace, of any perſon to be ſuſpected thereof, he may make a warrant to take and arreſt the perſon, and to have him before the maker of the warrant, or any other of the ſaid counſel, or juſtices of the peace; who may by their diſcretion examine him of the ſaid hunting, and of the ſaid doers in that behalf: And if the ſame perſon *wilfully conceal* the ſaid huntings, or any perſon with him defective therein, that then the ſame concealment be, againſt every ſuch perſon ſo concealing felony. But if he then confeſs the truth, and all that he ſhall be examined of

and

and knoweth in that behalf, then the ſaid offences of hunting by him done, ſhall be put treſpaſs fineable at the next general ſeſſions. And if any reſcous or diſobeyſance be made to any perſon having authority to execute the warrant, by any perſon the which ſo ſhould be arreſted, ſo that the execution of the warrant thereby be not had, then the ſaid reſcous and diſobeyſance ſhall be felony. And if any perſon ſhall be convict of any ſuch huntings, with painted faces, vizors, or otherwiſe diſguiſed, to the intent they ſhould not be known, or of unlawful hunting in time of night, then the ſame perſon ſo convict, to have like punition as he ſhould have if he were convict of felony. 1 *H.* 7. *c.* 7.

When information ſhall be made] This information muſt ſhew at leaſt juſt cauſe of ſuſpicion; and it muſt be taken in writing, becauſe it is the ground of the warrant. 3 *Inſt. c.* 21.

In any foreſt or park] This doth not extend to a chaſe, nor to any foreſt or park in uſe or reputation, which are not ſo in law. 3 *Inſt. c.* 21.

Wilfully conceal] Lord *Coke*, who is a lover of the common law, and is jealous of every violation of it, ſeemeth to be out of humour with this act, and calls it an ill-penned law. He obſerves it is the firſt that was made for the making of any hunting felony, againſt that excellent and equal branch of *charta de foreſta*, *nullus de cætero vitam vel membra amittat pro venatione noſtra*; and that this, and other old ſtatutes concerning the foreſt, are called the good old laws and cuſtoms, and commanded to be obſerved; and therefore this new act is too ſevere for wild beaſts, whereof there can be no felony at the common law. And therefore the judges (he ſays) have made a favourable conſtruction of it, as is ſet forth in the following notable report:

M. 19 & 20 *El.* in the king's bench. *Gerrard* the queen's attorney general (who was a grave and reverend man) ſaid openly, that it had been reſolved by the judges upon this ſtatute, that if a man in the night, or by day with painted face, do hunt as above, and being examined according to the act doth *conceal* it, yet this is upon the conſtruction of the whole act no felony. For the firſt clauſe concerning the concealment, and the laſt clauſe concerning the fact itſelf, muſt be coupled or joined by conſtruction together; that is to ſay, If any perſon be convict of ſuch hunting with painted face, or of unlawful hunting in the night, this conviction muſt be upon not

guilty pleaded; which the judges expounded to be the concealment intended in the firſt branch; for they held that it ought to be a judicial concealment, and not an extrajudicial concealment before one of the counſel or a juſtice of the peace, which may lie in averment, ſo as before it be felony he muſt be convicted of ſuch hunting upon not guilty pleaded firſt, and after ſuch conviction, then he muſt be indicted again upon the whole matter, that he feloniouſly did conceal it, againſt the form of the ſtatute; and if the offender upon the firſt indictment confeſſeth the indictment, then it is ſuch a judicial confeſſion as this act intendeth, and no felony within this ſtatute.

This he ſays, he heard the attorney report, and did then obſerve it; which concurring with his opinion, he thought good to publiſh, and the rather becauſe in *Lambard*'s juſtice, amongſt his precedents of indictments, there is an erroneous precedent (he ſays) of an indictment of felony for the concealment upon the examination before a juſtice of the peace. And upon the whole he thinks it the cleareſt way to make it treſpaſs, and not felony; which the party may do at his pleaſure. 3 *Inſt. c.* 21.

But lord *Hale* ſays, that this ſeems a difficult expoſition; for upon his arraignment for the hunting, he only anſwers to that indictment, and is not examined touching others; and beſides, if he be indicted for the hunting; if there be evidence to convict him of the fact, he is convict of felony before the indictment for concealment come; and if there be not evidence to convict him of the principal, how ſhall there be evidence to convict him of the concealment? 1 *H. H.* 659.

Penalty of keeping nets for deer.

4. The next ſtatute is in the 19th year of the ſame king, by which i is enacted, That no perſon, not having any park, chaſe or foreſt of his own, ſhall keep or cauſe to be kept any net, called deer-hays or buck-ſtalls, on pain of 10 l. a month; to him who ſhall ſue by action of debt: or, the juſtices in ſeſſions may call before them any perſon ſuſpected, and examine them; and if they be found in default, may commit them till they have found ſurety for the payment of the forfeiture to the king; and the juſtices ſhall have the tenth part of ſuch forfeiture for their labour. 19 *H.* 7. *c.* 11.

Penalty of ſtalking to deer.

5. And by the ſame ſtatute, no perſon ſhall ſtalk, nor cauſe any other to ſtalk, with any buſh, or beaſts, to any deer, except in his own ground, chaſe, foreſt, or park,

without licence of the owner, maſter, or keeper; on pain of 10l. in like manner.

6. The next act is in 5 *El.* *c.* 21. which is re-enacted with ſome additions by the 3 *J.* *c.* 13. which is altered and explained by the 7 *J.* *c.* 13. the ſubſtance of all which put together is as follows; 10l. or treble damages.

If any perſon ſhall by night or by day, wrongfully or unlawfully break or enter into any park impaled, or any other ſeveral grounds incloſed with wall, pale, or hedge, and uſed and kept for the keeping, breeding, and cheriſhing of deer, and wrongfully or unlawfully ſhall hunt, drive, or chaſe out, or take, kill, or ſlay any deer therin; and be thereof convicted at the aſſize or ſeſſions, upon indictment, bill of complaint, information, or otherwiſe, at the ſuit of the king or of the party, he ſhall for every offence pay 10l. to the party grieved, or treble damages and coſts, at the election of the party, to be aſſeſſed by the court; and ſhall find ſufficient ſureties for his good abearing for ſeven years, or continue in priſon till he finds ſuch ſureties.

But on ſatisfaction of treble damages, the party may releaſe the ſureties within the ſeven years. Or if the perſon ſhall acknowledge his offence in open ſeſſions, and that he is ſorry therefore, and ſatisfy the party grieved, the court may diſcharge the recognizance.

But this ſhall not extend to any park or incloſed ground, hereafter to be made and uſed for deer, without the king's licence.

7. And by the ſaid ſtatute of the 3 *J.* *c.* 13. it is alſo enacted, that if any perſon not having lands or hereditaments of 40l. a year, or not worth in goods 200l. ſhall uſe any gun or bow to kill deer; or ſhall keep any buckſtall or engine, unleſs he have grounds incloſed for keeping of deer; any perſon having 100l. a year may ſeize the ſame to his own uſe. Guns, bows, and nets to kill deer, may be ſeized.

8. Another ſtatute is 1 *J.* *c.* 27. which enacts, that every perſon who ſhall ſell, or buy to ſell again, any deer, ſhall, on conviction at the aſſizes, or ſeſſions, or before two juſtices out of ſeſſions, forfeit for every deer 40s. half to him that will ſue, and half to the poor. Selling deer.

9. The next act is in 13 *C.* 2. *c.* 10. by which it is enacted, that if any perſon ſhall unlawfully courſe, kill, hurt, or take away any red or fallow deer, in any foreſt, chaſe, purlieu, paddock, wood, park, or other ground where deer are or have been uſually kept, without conſent of the owner, or perſon chiefly intruſted with the cuſtody thereof; 20l.

thereof; or ſhall be aiding or aſſiſting therein; and ſhall be convicted thereof by confeſſion, or oath of one witneſs, before one juſtice, in ſix months after the offence committed; he ſhall forfeit for every offence 20 l. half to the informer, and half to the owner of the deer, by diſtreſs; for want of ſufficient diſtreſs, to be committed to the houſe of correction for ſix months to had labour, or to the common gaol for one year; and not to be diſcharged thence, till he hath given ſureties for his good behaviour for a year next after his enlargement.

Note; This act doth not appear to be limited to grounds incloſed only; altho' the ſtatute of the 10 *G.* 2. *c.* 32. hereafter following ſeems to ſuppoſe it ſo.

30 l. 10. The next act is the 3 *W.* *c.* 10. on which moſt of the convictions have been ſince that time; which together with the alterations and additions made in and to the ſame by the 5 *G.* *c.* 15. 9 *G.* *c.* 22. and 10 *G.* 2. *c.* 32. is as followeth:

If any perſon ſhall unlawfully courſe, hunt, take in toyls, kill, wound, or take away, any red or fallow deer, in any foreſt, chaſe, purlieu, paddock, wood, park, or other ground incloſed where deer are, have, or ſhall be uſually kept, without the conſent of the owner or perſon chiefly intruſted with the cuſtody thereof; or ſhall be aiding or aſſiſting therein; and ſhall be convicted (O) *thereof, in* 12 *months after the offence, by confeſſion, or oath of one credible witneſs, before one juſtice where the offence ſhall be committed, or the party apprehended: every ſuch perſon ſo offending by unlawful courſing or hunting only, when no deer is taken, wounded, or killed, ſhall forfeit for every ſuch offence* 20 *l. and in caſe any deer ſhall by ſuch perſon or perſons be wounded, taken in toyls or killed, ſuch perſon or perſons ſhall reſpectively forfeit for every ſuch deer* 30 *l. to be levied by diſtreſs* (P) *upon the goods and chattels of the offender by warrant of ſuch juſtice; one third to the informer, one third to the poor, and one third to the owner of the deer: for want of ſufficient diſtreſs, ſuch perſon ſhall be impriſoned* (Q) *for a year, and ſet in the pillory an hour on ſome market day in the next adjoining town to the place where the offence was committed, by the chief officer of ſuch market town, or his under officer.* ſ. 2.

Unlawfully] Where a man kills deer in purſuance of a ſuppoſed right which he has, he is not within the intent of this, nor of the other acts againſt deer ſtealing. L. *Raym.* 584.

In

In any foreſt, chaſe, purlieu, paddock, wood, park, or other ground incloſed, where deer are, have, or ſhall be uſually kept] *M.* 13 *G.* 2. *K.* againſt *Calcutt* and *Monk*. There was a conviction for deer ſtealing in a *purlieu* of the foreſt. Whereunto exception was taken, that it was not averred, that *deer were uſually kept* in the purlieu, whereas by the ſtatute that ſeems to be required. To this it was anſwered, That ſuch averment could not extend to a purlieu, for a purlieu is a place where by law deer cannot be kept, it being diſafforeſted as well with regard to all others as the owner; and the oath of the ranger is, to drive deer out of the purlieu into the foreſt: Secondly, that the averment as to foreſts, chaſes, and purlieus, is not made neceſſary by the act, for the words *where deer are uſually kept* extend only to ground incloſed; elſe the words *other ground* will make it neceſſary to aver, that the foreſt was incloſed, which is not the caſe in any part of *England*. And by the court, The anſwer is right in both reſpects. Another objection was, that it did not appear, but that the defendant was owner of the purlieu; in which caſe he had a right to chaſe the deer off his ground. But by the court, That would be matter of defence, and ſhould be ſhewn on his part, according to the reſolution (beforementioned) in the caſe of *K.* and *Bryan*. So the conviction was confirmed. *Str.* 1119.

Or other ground incloſed, where deer are, or ſhall be uſually kept] *T.* 1 *An.* Q. and *Moore*. A conviction for killing deer was quaſhed, becauſe it ſaid only that he killed deer *in a certain place where deer had been uſually kept*, and did not ſay *incloſed*. L. Raym. 791.

Aiding or aſſiſting therein] On a conviction, the queſtion was, whether he who lent dogs to another to hunt, was aiding and aſſiſting therein, to wit, in the hunting: And by the opinion of three judges he was; but *Holt* Ch. J. was of a contrary opinion, for this being a penal law, ſhall be conſtrued ſtrictly; and if ſo, then he who lent the dogs could not be aſſiſting in the act of hunting, and ſo not within the words of the ſtatute, *aiding and aſſiſting therein*, tho' he might be aſſiſting thereunto. 2 *Salk.* 542, 543.

And ſhall be convicted thereof] There ought to be a ſummons in this, and in all other like caſes, to warrant a conviction; and that ought to give a reaſonable time to appear in: but if the defendant hath appeared, it cures the want of a ſummons. 1 *Salk.* 181, 383.

H. 3 *G.*

H. 3 *G. K.* and *Simpſon.* The defendant was convicted for deer ſtealing; and the conviction ſet forth, that he had been ſummoned to appear before the juſtices; but it did not appear he ever was before them. Exception was taken to this, that as no appeal lies in this caſe, the juſtices ſhould not have proceeded in the abſence of the party, eſpecially where it may end in a corporal puniſhment, as it may do here, for want of a diſtreſs. And at another day, on conſideration, *Parker* Ch. J. delivered the reſolution of the court: We are all of opinion, the offender may be convicted, without appearing. The ſtatute is ſilent as to the method of proceeding, and the law of *England*, it is true, in point of natural juſtice, always requires the party charged with any offence to be heard before he be condemned in judgment; but that rule muſt have this exception, unleſs it is through his own default: were it otherwiſe, every criminal might avoid conviction. The law being ſo, the magiſtrate is bound to give ſome opportunity to the party to appear; and if upon ſuch notice, he neither comes, nor ſends a ſufficient excuſe, the magiſtrate may proceed to judgment. If this was not to be allowed, the conſequence would be, that the offender would eſcape unpuniſhed, becauſe he would never appear purpoſely to be convicted; and that would be to make the execution of the law depend on the will of the offender.

There was another order of conviction, whereby it appeared, that the defendant made an attorney to defend for him: And by the court; We think that it is certainly good; for the offender may entruſt his defence with another, and the juſtices cannot enforce him to appear in perſon. And the orders were confirmed. *Str.* 44.

In 12 *months after the offence*] A conviction being returned on a certiorari, the objection was, that the conviction appeared to be a year after the day of the information; but it was held ſufficient that the information be proſecuted within a year after the fact; for that is a good commencement of the ſuit, and it is from that the computation is made in all ſuch caſes. 1 *Salk.* 383.

But by the Black act hereafter mentioned, this proſecution may be commenced at any time within three years after the offence. 9 *G. c.* 22. *ſ.* 13.

Oath of one credible witneſs] This muſt not be upon the ſingle oath of the *informer*; and a conviction was quaſhed for that reaſon; divers convictions, as it is ſaid, having been

been quaſhed for the ſame reaſon before. L. *Raym.* 1545. *Str.* 316.

In the caſe of *K.* againſt *Wilford* and *Savage*, *M.* 5 *G.* The defendants were ſeverally convicted of deer ſtealing on this ſtatute. Exception was taken that the perſons, on whoſe teſtimonies the defendants were convicted, appeared to be of the ſame pariſh where the facts were committed, and ſo might be intitled to part of the penalty. But it was over-ruled by the court; becauſe the juſtice hath averred them to be *credible* witneſſes, and it doth not appear that they were of the poor of the pariſh. *Viner.* Deer ſtealing. A. 24.

So in the caſe of *K.* and *Mitter*, *H.* 7 *G.* 2. The offence was committed in the pariſh of *Barking*. The witneſs was an inhabitant of the ſame pariſh. It was objected, that part of the penalty being given to the poor of that pariſh, the witneſs was intereſted, and therefore incompetent. It was anſwered, that if indeed the penalty had been given to the overſeers of the poor of the pariſh, the objection might have had ſome weight in it, for then it would have been for the benefit of the rich as well as of the poor; but here it is given merely by way of bounty to the poor, and the reſt of the inhabitants can have no benefit by it. And the court was of opinion, that the objection was fully anſwered; and the conviction was confirmed. 2 *Barnardiſt.* 383.

Every ſuch perſon ſo offending] A conviction of two perſons was removed, wherein judgment was given, that each ſhould forfeit 30l. It was objected, that there ought to be but one 30l. forfeited. But not allowed: For the words of the act are, that they ſhall *reſpectively forfeit* 30l. and this penalty is not in nature of a ſatisfaction to the party grieved, but a puniſhment on the offender; and crimes are ſeveral, tho' debts be joint. 1 *Salk.* 182. *H.* 10 *An.* Q. againſt *King*.

To be levied by diſtreſs] *Sale* of the goods is not mentioned here in the ſtatute; yet nevertheleſs where the law gives a diſtreſs for a publick benefit, the officer may ſell. 1 *Salk.* 379.

By warrant of ſuch juſtice] Altho' the *conſtable* is not appointed to execute this warrant, nor is ſo much as named in the clauſe; yet he is bound to obey the warrant, and is indictable if he does not: but he need not return the warrant it ſelf, for that is not required, and it may

may be neceſſary to keep it for his own juſtification: but he muſt either return that, or certify what he has done upon it. 1 *Salk.* 381.

One third to the informer, &c.] The penalty need not be diſtributed by the conviction; *viz.* 10l. to the informer, 10l. to the poor, and 10l. to the party grieved; for the judgment in ſuch caſes ſeldom mentions a diſtribution: it is enough to ſay, that he is convicted, and hath forfeited 30l. according to the ſtatute. 1 *Salk.* 383.

For want of ſufficient diſtreſs] If the juſtice finds there is nothing to diſtrain, then he muſt make a record thereof, and make an adjudication for corporal puniſhment; but the offender is not to pay part, and ſuffer corporally for the reſidue. L. *Raym.* 546, 1195, 6.

H. 6 *G. K.* and *Whitlock.* The defendant was committed for want of diſtreſs; and the warrant ſet forth, that it had been certified to the juſtice by the conſtable, that there was not ſufficient diſtreſs. It was objected that there ought to have been a warrant to levy, and a return to that, that there was no diſtreſs; it may be, the conſtable only told him ſo. But by the court, The warrant is well enough; for the word *certified* imports it to be in a legal manner. *Str.* 263.

And then the act goes on thus:

Any owner of deer in any incloſed ground, or any perſon acting under him, may reſiſt ſuch offenders in the ſame manner as if the fact had been committed in an ancient chaſe or park. 3 *W.* *c.* 10. *ſ.* 5.

And as to the caſe of veniſon's being found in a man's poſſeſſion, it is further enacted, that the conſtable, by a juſtice's warrant, ſhall enter into and ſearch (R) in ſuch manner and with ſuch power as in caſe where goods are ſtolen or ſuſpected to be ſtolen, the houſes, outhouſes, or other places belonging to ſuch houſes of ſuſpected perſons; and if any veniſon or ſkin of any deer, or toyls, ſhall there be found, he ſhall apprehend the offender, and carry him before a juſtice; and if ſuch perſon do not give a good account how he came by the ſame, ſuch as ſhall ſatisfy the ſaid juſtice, or elſe ſhall not in ſome convenient time to be ſet by the ſaid juſtice, produce the party of whom he bought the ſame, or ſome other credible witneſs to depoſe upon oath ſuch ſale thereof, he ſhall be convicted by the ſaid juſtice of ſuch offence, and thereupon ſhall be ſubject to the forfeitures and penalties hereby inflicted for the killing of one deer. 3 *W.* *c.* 10. *ſ.* 3.

And

And by the 9 *G. c.* 22. commonly called the Black act, any juſtice may iſſue his warrant for this purpoſe; and if any veniſon or ſkin of any deer, ſhall be found in the cuſtody of any perſon, and it ſhall appear that ſuch perſon bought ſuch veniſon or ſkin of any one who might be juſtly ſuſpected to have unlawfully come by the ſame, and doth not produce the party of whom he bought it, or prove upon oath the name and place of abode of ſuch party, then the perſon who bought the ſame ſhall be convicted of ſuch offence by any juſtice of the peace, and ſhall be ſubject to the penalty above inflicted for killing one deer. 9 *G. c.* 22. *ſ.* 11, 17.

After conviction, the conſtable or proſecutor may detain in cuſtody the offender, if he ſhall not preſently pay the money due on conviction, during ſuch reaſonable time as a return may be conveniently made to the warrant of diſtreſs, ſo as ſuch detainer exceed not two days. 3 *W. c.* 10. *ſ.* 4.

And moreover, the perſon convicted, before he ſhall be diſcharged out of cuſtody, ſhall become bound to the perſon againſt whom the offence ſhall be committed, in 50 l. for his future good behaviour, and that he ſhall not offend in like manner; and upon refuſal ſhall be committed to gaol until the bond be given: And if he ſhall be afterwards convicted of any offence in the ſaid ſtatute of 3 *W. c.* 10. the bond ſhall be forfeited, and the penalty be recovered with full coſts in any court at *Weſtminſter*, over and above the forfeiture, and to be diſtributed as the forfeitures. 5 *G. c.* 15. *ſ.* 4.

All this being done, the juſtice ſhall certify a true copy of the conviction under his hand and ſeal, to the next quarter ſeſſions, there to be kept among the records. 10 *G.* 2. *c.* 32. *ſ.* 8.

And no *certiorari* ſhall be allowed to remove any conviction, or other proceeding thereupon, unleſs the party, before the allowance thereof be bound to the proſecutor in 50 l. with ſuch ſureties as the juſtice ſhall think fit, to pay in a month after the conviction confirmed, or a *procedendo* granted, full coſts and damages, to be aſcertained upon his oath; and at the ſame time become alſo bound to the juſtice with ſufficient ſureties, in the penalty of 60 l. with condition to proſecute the *certiorari* with effect, and to pay to the juſtice the forfeitures due by the conviction, or to render to the juſtice the perſon convicted within a month after the conviction ſhall be confirmed, or a *procedendo* granted: and in default thereof, the juſtice may proceed

to

to the execution of the conviction. 3 *W.* *c.* 10. *ſ.* 6. 5 *G.* *c.* 15. *ſ.* 1.

Or, after delivering to the juſtice the rule by which the conviction ſhall be confirmed, he may proceed, as if a *procedendo* had been granted. 5 *G.* *c.* 15. *ſ.* 2.

H. 6 *G. K.* and *Whitlock.* The defendant being brought up from *Newgate* by *habeas corpus*, it appeared upon the return, that he was committed for deer ſtealing, as the ſtatute of the 3 *W.* *c.* 10. directeth, not having ſufficient diſtreſs; and that this was done by one juſtice under the ſtatute of the 5 *G.* And exception was taken to the warrant, that it doth not appear, the conviction was ever confirmed in this court, or that the rule for confirmation was delivered to the juſtice, and therefore the juſtice could not proceed to execution: for the ſtatute gives to the juſtice a juriſdiction after confirmation, which he had not before: and therefore he ought to ſhew every thing requiſite to found his juriſdiction upon. But by the court, We take notice of our own records, and by them it appears that the conviction is confirmed: and the ſtatute doth not give the juſtice a new juriſdiction, but only revives his old one, which was ſuſpended by the certiorari. And the defendant was remanded. *Str.* 263.

Moreover, by the ſaid act of 5 *G.* *c.* 15. it is enacted, that if any keeper or other officer of any park, or place where deer are uſually kept, ſhall be convicted on the ſaid ſtatute of the 3 *W.* for killing or taking away any red or fallow deer, or being aiding therein, without conſent of the owner, or perſon chiefly intruſted with the cuſtody thereof; he ſhall forfeit 50 l. for each deer, to be diſtributed as the other forfeitures; to be levied by diſtreſs: for want of diſtreſs, to be impriſoned for three years, and be ſet in the pillory two hours on ſome market day in the next town to the place where the offence was committed, by the chief officer of ſuch market town, or his under officer. *ſ.* 5.

And it is further enacted, that if any perſon ſhall at any time pull down or deſtroy, or cauſe to be pulled down or deſtroyed, the pale or walls of any park, foreſt, chaſe, purlieu, paddock, wood, or other ground incloſed, where any red or fallow deer ſhall be then kept, without the conſent of the owner, or perſon chiefly intruſted with the cuſtody thereof; and ſhall be convicted thereof before one juſtice, by confeſſion, or oath of one witneſs, he ſhall ſuffer the ſaid forfeitures of the 3 *W.* for killing one deer. 5 *G.* *c.* 15. *ſ.* 6.

And

And any perſon ſued for any thing done either on the 3 *W.* *c.* 10. or on this act, may plead the general iſſue; and if he recovers, ſhall have treble coſts. 5 *G.* *c.* 15. *ſ.* 3.

11. Next follows the ſtatute of the 5 *G.* *c.* 28. by which it is enacted, that if any perſon ſhall enter into any park, paddock, or other incloſed ground where deer are uſually kept, and wilfully wound or kill any red or fallow deer there, without conſent of the owner of the ground, or of the perſon intruſted with the cuſtody thereof, or ſhall be aiding or aſſiſting therein; and ſhall be convicted thereof before the judge of aſſize, upon indictment, by verdict or confeſſion,—he ſhall be tranſported for ſeven years: Tranſportation for offences in places incloſed.

But not to be proſecuted likewiſe on any of the former acts, all which nevertheleſs ſhall be of force.

12. Thus ſtood the laws, till the great inſolencies of the *Waltham Blacks* made a further proviſion neceſſary, by that famous act of the 9 *G.* *c.* 22. from them uſually called the *Black Act*, which hath created more new felonies than any other ſtatute whatſoever: which with regard to the ſubject before us, doth enact as follows: Felony without benefit of clergy.

If any perſon or perſons, being armed with ſwords, fire arms, or other offenſive weapons, and having his or their faces blacked, or being otherwiſe diſguiſed, ſhall appear in any foreſt, chaſe, park paddock, or grounds incloſed with any wall, pale or other fence, wherein any deer have been or ſhall be uſually kept, or ſhall unlawfully and willfully hunt, wound, kill, deſtroy, or ſteal any red or fallow dear; or if any perſon or perſons (whether armed and diſguiſed or not) ſhall unlawfully and wilfully hunt, wound, kill, deſtroy, or ſteal any red or fallow deer, fed or kept in any places in any of the king's foreſts or chaſes, which are or ſhall be incloſed with pales, rails, or other fences; or in any park, paddock, or grounds incloſed, where deer have been or ſhall be uſually kept; or ſhall forcibly reſcue any perſon being lawfully in cuſtody of any officer or other perſon, for any the ſaid offences; or ſhall by gift or promiſe of money, or other reward, procure any to join him or them in any ſuch unlawful act: every perſon ſo offending, being thereof lawfully convicted (in any county in *England*) ſhall be guilty of felony without benefit of clergy; but not to work corruption of blood, nor forfeiture of lands or goods.

Concerning the manner of bringing the offender to juſtice, and other particulars relating thereunto, it is proper

to refer from hence to the title *Black Act*; where theſe offences, together with the other offences in the ſaid act, are treated of more at large.

Tranſportation for a ſecond offence in places unincloſed.

13. It is to be obſerved, that this act of the 9 *G. c.* 22. extends only to killing and wounding deer in places *incloſed* (except the offender be withal armed and diſguiſed); and therefore the ſaid offence in places *unincloſed* remains as it was before the making the ſaid act: But by the ſtatute of 10 *G.* 2. *c.* 32. a ſecond offence againſt the former acts is made tranſportation: Which, after having recited, that whereas the aboveſaid act of the 9 *G. c.* 22. extends not to hunting or taking deer in open foreſts or chaſes, but only in ſuch as are incloſed, and offences in unincloſed places are only puniſhable by the 3 *W. c.* 10. which inflicts only a pecuniary puniſhment, which is not ſufficient to deter offenders,——doth therefore enact, That if any perſon who ſhall be convicted of unlawfully courſing, hunting, taking in toils, killing, wounding, or taking any red or fallow deer, in any open or unincloſed foreſt or chaſe, where deer are uſually kept, ſhall be guilty of a ſecond offence of the like nature, and ſhall be thereof lawfully convicted on indictment or information; he ſhall be tranſported for ſeven years; and if he returns within the time, he ſhall be guilty of felony without benefit of clergy. And the clerk of the peace ſhall at the requeſt of the proſecutor, or of any perſon on his majeſty's behalf, certify to the aſſizes a tranſcript under his hand and ſeal, briefly and in few words containing the effect and tenor of the firſt conviction (kept amongſt the records); whiche ertificate ſhall be ſufficient proof of the firſt conviction. 10 *G.* 2. *c.* 32. *ſ.* 7, 8.

Beating the keeper, tranſportation.

14. Moreover, by the ſaid act of the 10 *G.* 2. *c.* 32. If any perſon armed ſhall come into any foreſt, chaſe, or park, wherein deer are uſually kept, (whether incloſed or not) with an intent to courſe, hunt, take in toyls, kill, wound, or take away any red or fallow deer, and ſhall there unlawfully beat or wound any keeper or page of any ſuch foreſt, chaſe or park, their ſervants or aſſiſtants in the execution of their office, and be thereof lawfully convicted; he ſhall be tranſported for ſeven years. 10 *G.* 2. *c.* 32. *ſ.* 9.

Deſtroying covert for deer.

15. Whereas the burning and deſtroying of goſs, furze, and fern in foreſts and chaſes, doth deſtroy the cover neceſſary for the preſervation of the deer and game there; therefore if any perſon not having a right or legal licence to do the ſame, ſhall ſet fire to, burn, or deſtroy (or be

aiding therein) any goſs, furze, or fern in any foreſt or chaſe, without conſent of the owner or perſon chiefly intruſted with the cuſtody of ſuch foreſt or chaſe, or of ſome part thereof, and being brought before a juſtice ſhall be thereof convicted by confeſſion, or oath of one witneſs, or on view of the juſtice, he ſhall forfeit not exceeding 5 l. uor leſs than 40 s. half to the informer, and half to the poor; if not forthwith paid, to be levied by diſtreſs; and if no ſufficient diſtreſs can be found, the juſtice ſhall commit him to the common gaol, for any time not exceeding three months, nor leſs than one month. 28 *G.* 2. *c.* 19. *ſ.* 3.

II. Of hares.

It is to be remembred, that I have already, under the third part of this title, treated of thoſe particulars, which are common to this with other ſpecies of the game, as to deſtroying the ſame by unqualified perſons; I here take notice of ſuch things as belong to hares only, and which for the moſt part ſeem generally to cercern all perſons, whether qualified or not.

Tracing in the ſnow.

1. No perſon of what eſtate, degree, or condition he be, ſhall trace, deſtroy, and kill any hare in the ſnow, with any dog, bitch, bow, nor otherwiſe. And the ſeſſions or leet may inquire hereof; and after inquiſition found, they ſhall for every hare ſo killed, ceſs upon every offender 6 s. 8 d. to be forfeited to the king, if in the ſeſſions; and to the lord of the leet, if in the leet. 14 & 15 *H.* 8. *c.* 10.

And by the 1 *J. c.* 27. Every perſon who ſhall trace or courſe any hares in the ſnow; ſhall, on conviction before two juſtices, by confeſſion, or oath of two witneſſes, be committed to gaol for three months, unleſs he pay to the churchwardens for the uſe of the poor, 20 s. for every hare; or after one month after his commitment become bound by recognizance with two ſureties in 20 l. apiece, before two juſtices, not to offend again in like manner. *ſ.* 2.

Snares and harepipes.

2. And by the ſaid laſt mentioned act, every perſon who ſhall at any time take or deſtroy any hares, with harepipes, cords, or any ſuch inſtruments or other engines, ſhall forfeit for every hare 20 s. in like manner. 1 *J. c.* 27. *ſ.* 2.

And by the 22 & 23 *C.* 2. *c.* 25. *ſ.* 6. If any perſon ſhall be found or apprehended ſetting or uſing any ſnares,

harepipes, or other like engines, and ſhall be thereof convicted, by confeſſion, or oath of one witneſs, before one juſtice, in one month after the offence; he ſhall give to the party injured ſuch damages, and in ſuch time, as the juſtice ſhall appoint, and ſhall pay down preſently to the overſeers for the uſe of the poor, ſuch ſum not exceeding 10 s. as the juſtice ſhall appoint; which if he ſhall not do, the juſtice ſhall commit him to the houſe of correction not exceeding one month.

Killing hares in the night.

3. If any perſon whatſoever ſhall take or kill any hare in the night time; he ſhall on conviction before one juſtice, on oath of one witneſs, forfeit 5 l. half to the informer, and half to the poor, by diſtreſs; for want of diſtreſs, to be ſent to the houſe of correction for three months for the firſt offence, and for every other offence four months. 9 *Ann. c.* 25. *ſ.* 3.

Shooting hares.

4. Every perſon who ſhall ſhoot at, kill, or deſtroy any hare, with any gun or bow, ſhall on conviction before two juſtices, by confeſſion, or oath of two witneſſes, be committed to gaol three months, unleſs he pay to the churchwardens for the uſe of the poor 20 s. for every hare; or after one month after his commitment become bound by recognizance with two ſureties before two juſtices, in 20 l. apiece, not to offend again in like manner. The recognizance to be returned to the next ſeſſions. 1 *J. c.* 27. *ſ.* 2.

Buying and ſelling hares.

5. Every perſon, who ſhall ſell, or buy to ſell again, any hare, ſhall, on conviction at the aſſizes or ſeſſions, or before two juſtices out of ſeſſions, forfeit for every hare 10 s. half to the poor, and half to him that will ſue. 1 *J. c.* 27. *ſ.* 4.

Hunting in corn.

6. If any manner of perſons ſhall hunt with ſpaniels in any ground where corn or other grain ſhall then grow (except in his own ground), at ſuch time as any eared corn or grain ſhall be growing thereon, and before it be ſhocked or cocked, and be thereof convicted at the aſſizes, ſeſſions, or leet; he ſhall forfeit 40 s. to the owner of the corn; and if not paid in ten days, he ſhall be impriſoned for one month. And any juſtice may examine the offender, and bind him over to appear, at the next ſeſſions to anſwer the offence, and to pay the penalty, or receive the puniſhment. 23 *El. c.* 10. *ſ.* 5.

Taking hares in warrens.

7. By the Black Act before mentioned, if any perſon, armed and diſguiſed, ſhall appear in any warren or place where hares are uſually kept, or unlawfully rob any ſuch warren; or (whether armed and diſguiſed or not) ſhall

reſcue any perſon in cuſtody for either of the ſaid offences, or procure any to join with him in any ſuch unlawful act; he ſhall be guilty of felony without benefit of clergy.

III. Of conies.

Treſpaſſers in warrens may be reſiſted.

1. If any warrener ſhall find any treſpaſſers wandring within his liberty, intending to do damage therein, and that will not yield themſelves after hue and cry made to ſtand unto the peace, but do flee, or defend themſelves; altho' the warrener, or his aſſiſtant, do kill ſuch offenders, they ſhall not be troubled upon the ſame. 21 *Ed.* 1. *ſt.* 2.

Hunting in a warren by night or diſguited.

2. When information ſhall be made of unlawful hunting in a warren by night, or with painted faces, to any of the king's counſel, or to a juſtice of the peace, of any perſon ſuſpected, he may make a warrant to bring ſuch perſon before himſelf or any other of the ſaid counſel or juſtices; and if ſuch perſon ſhall conceal the ſaid hunting or any of his accomplices, it ſhall be felony; but if he confeſſeth, it ſhall be but treſpaſs finable at the ſeſſions. 1 *H.* 7. *c.* 7.

Hunting by night in a warren incloſed.

3. If any perſon ſhall in the night time enter into any grounds incloſed, and uſed for keeping of conies, and hunt, drive out, take, or kill any conies; he ſhall, on conviction at the ſuit of the king or of the party, at the aſſizes or ſeſſions, on indictment, bill, information, or otherwiſe, be impriſoned 3 months, and pay to the party grieved treble damages and coſts, and find ſureties for his good abearing for ſeven years, or continue in priſon till he does: but this ſhall not extend to any grounds to be incloſed and uſed for conies after the making of this act, without the king's licence. 3 *J.* *c.* 13.

Killing in places incloſed or unincloſed, by night or day.

4. If any perſon ſhall at any time enter wrongfully into any warren or ground lawfully uſed or kept for the breeding or keeping of conies, whether it be incloſed or not; and there ſhall chaſe, take, or kill any conies; and ſhall be thereof convicted in one month after the offence, before one juſtice, by confeſſion, or oath of one witneſs; he ſhall yield to the party grived treble damages and coſts, and be impriſoned 3 months, and after till he find ſureties for his good abearing. 22 & 23 *C.* 2. *c.* 25. *ſ.* 4.

If by night, further penalty of tranſportation.

5. If any perſon ſhall wilfully and wrongfully, in the night time, enter into any warren or grounds lawfully uſed or kept for the breeding or keeping of conies, altho'

the ſame be not incloſed, and ſhall then and there wilfully and wrongfully take or kill, in the night time, any coney, againſt the will of the owner or occupier thereof; or ſhall be aiding and aſſiſting therein; and ſhall be convicted thereof at the aſſizes; he ſhall be tranſported for ſeven years, or ſuffer ſuch other leſſer puniſhment by whipping, fine, or impriſonment, as the court ſhall award. Provided, that conies may be taken, in the day time, on the ſea or river banks in the county of Lincoln, ſo far as the tide ſhall extend, or within one furlong of the ſaid banks; and the perſon taking them ſhall not be obliged to make ſatisfaction for damage, unleſs the ſame ſhall exceed the ſum of 1 s. 5 *G.* 3. *c.* 14. *ſ.* 6, 7, 8, 9.

Felony without benefit of clergy.

6. By the Black Act abovementioned, If any perſon, being armed and diſguiſed, ſhall appear in any warren or place where conies are uſually kept, or unlawfully rob any ſuch warren; or (whether armed and diſguiſed or not) ſhall reſcue any perſon in cuſtody for ſuch offence, or procure any perſon to join him therein; he ſhall be guilty of felony without benefit of clergy.

Killing in the night, in the borders of warrens.

7. No perſon ſhall kill or take in the night any conies upon the borders of warrens, or other grounds lawfully uſed for the breeding or keeping of conies (except the owner or poſſeſſor of the ground, or perſons employed by them); on pain that the offender, on conviction in one month after the offence, before one juſtice, by confeſſion, or oath of one witneſs, ſhall give to the party injured ſuch damages and in ſuch time as ſhall be appointed by the juſtice, and over and above pay down preſently to the overſeers for the uſe of the poor ſuch ſum not exceeding 10 s. as the juſtice ſhall appoint; which if he ſhall not do, the juſtice ſhall commit him to the houſe of correction for ſuch time as he ſhall think fit, not exceeding one month. 22 & 23 *C.* 2. *c.* 25. *ſ.* 5.

The ſtatute ſaith, *upon the borders of warrens*; but if they are out of the warren, no perſon hath any property in them, and a man may juſtify killing them if they eat up his corn; but no action lies againſt the owner of the warren. 5 *Co.* 104. *Read.* Game.

So a perſon that hath a right of common may kill them, when they are out of the warren and deſtroy the common; but he cannot have an action of the caſe againſt the lord, for that would be to create a multip icity of actions. *Cro. El.* 548. *Cro. Ja.* 195. *Cro. Car.* 388.

For a man cannot have an action for another man's conies breaking into his ground, becauſe they are no longer

longer the other's than while they are in the warren or place where he hath a right to keep them; ſo that no violation hereby ariſes to the property of one man by the beaſts of another; but the conies, being in their natural liberty, may be lawfully killed by the owner of the ſoil. 2 *Bac. Abr.* 614.

But if the lord hath a right to put conies upon the common, and by an exceſs in the number ſurcharges the common, and by the number of burrows made by the conies prevents the commoner's cattle from depaſturing the common; an action in ſuch caſe is the proper remedy, and the tenant may not of his own accord fill up the burrows and remove the nuſance. As in the caſe of *Cooper* v. *Marſhall*, *E.* 30 *G.* 2. By lord *Mansfield* Ch. J. The queſtion in this caſe is not, whether the act of the lord be or be not hurtful, or how far it may be ſo; but the queſtion turns upon the remedy, whether it is abatable, whether the commoner can do himſelf juſtice. It may be prejudicial to the commoner, yet not injurious; it may be both prejudicial and injurious, yet not abatable. The lord, by his grant of common, gives every thing incident to the enjoyment of it, as ingreſs, egreſs, and the like; and thereby authorizes the commoner to remove every obſtruction to his cattle's grazing the graſs which grows upon ſuch a ſpot of ground: becauſe every ſuch obſtruction is directly contrary to the terms of the grant. A hedge, a gate, or a wall, to keep the commoner's cattle out, is inconſiſtent with a grant which gives them a right to come in. But the lord ſtill remains owner of the ſoil; and is not debarred from exerciſing any act of ownerſhip. The commoner has no right to meddle with the ſoil. In the preſent caſe, the lord has done nothing contrary to the grant. He hath not obſtructed the commoner from entring and putting in his cattle. The lord has a right to put conies upon the common. The conies themſelves naturally make the burrows. So that they are incident to the right of putting on the conies. If the lord ſurcharges, the commoner is injured in his right of common, it is true: But what is the commoner's remedy? Not, to abate; not, to be his own judge, in a complicated queſtion, which may admit of nicety to determine. There is a certain line to be drawn. The lord has a right ſo far, but no further. Yet the commoner cannot deſtroy or drive off the conies; nor, conſequently can he deſtroy the burrows, which is in effect deſtroying the conies.——By Mr. Juſtice *Deniſon*: Upon

the record of this caſe, it muſt be taken, that the plaintiff was owner of the ſoil, and had a free warren; and that there is not ſufficient common left, by the increaſe of the conies, for the uſe of the commoner. The queſtion then is, whether the commoner ſhall be intruſted to deſtroy the eſtate of the lord, in order to preſerve his own right of common. This would be to conſtitute himſelf judge in his own cauſe: No, let him take his proper remedy. A coney-burrow is not of its own nature a nuſance: on the contrary, it is eſſential to a free warren. Therefore the nuſance depends upon the number of them: And you can, at the utmoſt, only abate ſo much of the thing as is a nuſance. You cannot deſtroy the whole (which is the right here claimed); but only ſo much of the thing as makes it a nuſance.——By Mr. juſtice *Foſter*: This juſtification is clearly bad. It is founded on a claim of right which cannot be maintained. It is admitted, that a commoner cannot in this caſe deſtroy the conies. Conſequently; he cannot deſtroy the burrows; for the effect is, deſtroying the conies. If the lord has exceeded the bounds of his right, the law is to determine the quantum of ſuch exceſs; and to the law the commoner muſt reſort for his remedy, if he is aggrieved. *Burrow. Mansfield.* 259.

Setting ſnares. 8. If any perſon ſhall be found or apprehended ſetting or uſing any ſnares or other like engines, and ſhall be thereof in like manner convicted, he ſhall give to the party grieved ſuch damages, and in ſuch time as the juſtice ſhall appoint, and pay down preſently to the overſeer for the uſe of the poor ſuch ſum not exceeding 10 s. as the juſtice ſhall appoint; which if he ſhall not do, the juſtice ſhall commit him to the houſe of correction not exceeding one month. 22 & 23 *C.* 2. *c.* 25. *ſ.* 6.

Keeping engines. 9. If any perſon not having lands or hereditaments of 40 l. a year, or not worth in goods 200 l. ſhall uſe any gun or bow to kill conies, or ſhall keep any ferrets or coney dogs (except he have grounds incloſed for keeping of conies, the increaſing of which ſhall amount to 40 s. a year to be let, and except warreners in their warrens); in ſuch caſe, any perſon having 100 l. a year may ſeize the ſame to his own uſe. 3 *J.* *c.* 13. *ſ.* 5.

VI. Laws concerning the winged game in particular.

I. Of hawks and hawking.
II. Of ſwans.
III. Of partridges and pheaſants.
IV. Of pigeons.
V. Of wild ducks, wild geeſe, and other water fowl.
VI. Of heath fowl or moor game.
VII. Of herons.
VIII. Of other fowl.

I. Of hawks and hawking.

What hawks a man ſhall bear.

1. No man ſhall bear any hawk of the breed of *England*, called a nyeſſe, goſhawk, taſſel, laner, laneret, or faulcon, on pain of forfeiting his hawk to the king. And if he bring any of them over ſea, he ſhall bring a certificate thereof from the officer of the port; on the like pain of forfeiting the ſame to the king. And the perſon that bringeth any ſuch hawk to the king, ſhall have a reaſonable reward of the king, or elſe the hawk for his labour. 11 *H.* 7. *c.* 17.

Perſons finding a hawk.

2. Every perſon who findeth a faulcon, tercelet, laner, or laneret, or other hawk that is loſt, ſhall preſently bring the ſame to the ſheriff; and the ſheriff ſhall make proclamation in all the good towns in the county, that he hath ſuch an hawk in his cuſtody; and if he is challenged in four months, the owner ſhall have him again, paying the coſts: if he is not challenged in four months, the ſheriff ſhall have him, making gree to him that took him, if he be a ſimple man; but if he be a gentleman, and of eſtate to have the hawk, then the ſheriff ſhall redeliver to him the hawk, taking of him reaſonable coſts for the time that he had him in cuſtody. 34 *Ed.* 3. *c.* 22.

Stealing a hawk.

3. And if any man ſteal any hawk, and the ſame carry away, not doing the ordinance aforeſaid; it ſhall be done of him as of a thief, that ſtealeth a horſe or other thing. 37 *Ed.* 3. *c.* 19. That is, he ſhall be guilty of felony, but ſhall have his clergy. 3 *Inſt.* 98.

4. If

Taking hawks or eggs out of the woods.

4. If any perſon ſhall take away any hawks or their eggs, by any means unlawfully, out of the woods or ground of any perſon; and be thereof convicted at the aſſizes or ſeſſions, on indictment, bill or information, at the ſuit of the king or of the party; he ſhall be impriſoned three months, and ſhall pay treble damages; and after the three months expired, ſhall find ſureties for his good abearing for ſeven years, or remain in priſon till he doth. 5 *El. c.* 21. *ſ.* 3.

But by a more antient ſtatute, no man ſhall take any ayre, faulcon, goſhawk, taſſel, laner, or laneret, in their warren, wood, or other place; nor purpoſely drive them out of their coverts accuſtomed to breed in, to cauſe them to go to other coverts to breed; nor ſlay them for any hurt done by them: on pain of 10 l. half to him that will ſue before the juſtices of the peace, and half to the king. 11 *H.* 7. *c.* 17.

And no manner of perſon, of what condition or degree he be, ſhall take or cauſe to be taken, on his own ground or any other man's, the eggs of any faulcon, goſhawk, or laner, out of the neſt; on pain (being convicted thereof before the juſtices of the peace) of impriſonment for a year and a day, and fine at the king's will; half to the king, and half to the owner of the ground where the eggs were taken. *id.*

Hawking in corn.

5. If any manner of perſon ſhall hawk in another man's corn after it is eared, and before it is ſhocked; and be convicted at the aſſizes, ſeſſions, or leet; he ſhall forfeit 40 s. to the owner: And if not paid in ten days, he ſhall be impriſoned for a month. 23 *El. c.* 10.

II. Of ſwans.

Qualification to keep ſwans.

1. No perſon (other than the king's ſon) unleſs he have lands of freehold to the value of five marks a year, ſhall have any mark or game of ſwans; on pain of forfeiting the ſwans, half to the king, and half to any perſon (ſo qualified) who ſhall ſeize the ſame. 22 *Ed.* 4. *c.* 6.

Stealing ſwans marked.

2. It is felony to take any ſwans that be lawfully marked, tho' they be at large. *Dalt. c.* 156.

Swans unmarked.

3. And as to ſwans unmarked; if they be domeſtical or tame, that is, kept in a mote, or in a pond near to a dwelling houſe, to ſteal ſuch is alſo felony. *Dalt. c.* 156.

So it ſeemeth of ſwans unmarked, ſo long as they keep within a man's manor, or within his private rivers; or if they

they happen to escape from thence, and be pursued and taken, and brought in again. *id.*

But if swans that are unmarked shall be abroad, and shall attain to their natural liberty, then the property of them is lost; and so long, felony cannot be committed by taking them. *id.*

And yet such unmarked and wild swans the king's officers may seize (being abroad) for the king's use, by his prerogative. Also, the king may grant them, and by consequence another may prescribe to have them, within a certain precinct or place. *id.*

Swans eggs.

4. Every person who shall take the eggs of any swans out of the nest, or wilfully spoil them in the nest; and shall be convicted thereof before two justices, by confession, or oath of two witnesses; shall be committed to gaol three months, unless he pay to the churchwardens for the use of the poor, 20 s. for every egg; or after one month of his commitment, become bound by recognizance with two sureties in 20 l. apiece, before two justices, never to offend again in like manner; which recognizance shall be returned to the next sessions. 1 *J. c.* 27. *s.* 2.

But by a more ancient statute, no person shall take or cause to be taken, on his own ground or any other man's, the eggs of any swan; on pain (on conviction before the justices of the peace) of imprisonment for a year and a day, and fine at the king's will, half to the king, and half to the owner of the swans. 11 *H.* 7. *c.* 17.

III. Of Partridges and pheasants.

Partridges and pheasants are birds of warren, and the law seems peculiarly to protect them; as appears by what follows:

Taking them in another man's ground.

1. By the 11 *H.* 7. *c.* 17. it is enacted, that no person of what condition he be, shall take or cause to be taken, any pheasants or partridges by nets, snares, or other engines, out of his own warren, upon the freehold of any other person, without the special licence of the owner or possessioner of the same; on pain of 10 l. half to him that shall sue, and half to the owner or possessioner of the ground where they shall be taken.

Taking them with dogs, nets, or engines; or their eggs.

2. Every person who shall shoot at, kill, or destroy any pheasant or partridge, with any gun or bow; or shall take, kill, or destroy them with setting dogs and nets, or with any manner of nets, snares, engines, or instruments whatsoever;

whatſoever; or ſhall take their eggs out of the neſt, or ſpoil them in the neſt; ſhall on conviction before two juſtices, by confeſſion, or oath of two witneſſes, be committed to gaol three months, unleſs he pay upon conviction to the churchwardens for the uſe of the poor, 20 s. for every pheaſant, partridge, or egg; or after one month after his commitment, become bound by recognizance with two ſureties, before two juſtices, in 20 l. each, not to offend again in like manner. The recognizance to be returned to the next ſeſſions. 1 *J.* *c.* 27. *ſ.* 2.

And by the 7 *J.* *c.* 11. Every perſon who ſhall take, kill, or deſtroy, any pheaſant or partridge, with ſetting dogs and nets, or otherwiſe with any manner of nets, ſnares, or engines, ſhall, on conviction before two juſtices, by confeſſion, or oath of one witneſs, be committed to gaol for three months, unleſs he forthwith pay to the churchwardens, or overſeers 20 s. for every pheaſant or partridge; and further to become bound by recognizance of 20 l. before one juſtice, that he ſhall not thereafter kill or deſtroy any pheaſant or partridge. The recognizance to be filed at the next ſeſſions.

Selling or buying. 3. Every perſon who ſhall ſell, or buy to ſell again, any partridge or pheaſant (except they be reared and brought up in houſes, or brought from beyond ſea); ſhall on conviction at the aſſizes or ſeſſions, or before two juſtices out of ſeſſions, forfeit for every partridge 10 s. and for every pheaſant 20 s. half to him that will ſue, and half to the poor. 1 *J.* *c.* 27. *ſ.* 4.

Taking in the night. 4. If any perſon, of what eſtate, degree, or condition ſoever, ſhall take, kill or deſtroy any pheaſants or partridges in the night time; and be thereof convicted at the aſſizes, ſeſſions, or leet; he ſhall forfeit for every pheaſant 20 s. and for every partridge 10 s. half to him that ſhall ſue, and half to the lord of the manor, unleſs ſuch lord ſhall licenſe or procure the ſaid taking or killing, in which caſe the ſaid half ſhall go to the poor, to be recovered by any one of the churchwardens; and if not paid in 10 days after conviction, he ſhall be impriſoned for one month: And moreover, beſides ſuch forfeiture and impriſonment, he ſhall give bond to ſome juſtice of the peace, with good ſureties, not to offend again in like manner for the ſpace of two years. 23 *El.* *c.* 10.

And by the 9 *An.* *c.* 25. If any perſon whatſoever ſhall take or kill any pheaſant or partridge in the night time; he ſhall on conviction before one juſtice, on oath of one witneſs, forfeit 5 l. half to the informer, and half to the poor,

Poor, by diſtreſs; for want of diſtreſs, to be ſent to the houſe of correction for three months for the firſt offence, and for every other offence four months.

5. Every perſon whatſoever, who ſhall hawk at, deſtroy, or kill, any pheaſant or partridge, with any kind of hawk, or dog, by colour of hawking, between the firſt of *July* and the laſt of *Auguſt*, ſhall on conviction before two juſtices, by confeſſion, or oath of two witneſſes, in ſix months after the offence, be committed to gaol for one month, unleſs he pay upon conviction to the churchwardens or overſeers for the uſe of the poor, 40s. for every ſuch hawking at any pheaſant or partridge, and 20s. for every ſuch pheaſant or partridge which he, his hawk, or dog, ſhall take or kill. 7 *J.* *c.* 11. *ſ.* 2. At what time hawking at them ſhall be prohibited.

6. Finally, by the 2 *G.* 3. *c.* 19. No perſon ſhall, upon any pretence whatſoever, take, kill, carry, ſell, buy, or have in his poſſeſſion or uſe, any partridge between Feb. 12. and Sep. 1. or any pheaſant between Feb. 1. and Oct. 1. yearly; on pain of forfeiting, on conviction by one witneſs, in any of the courts of record at *Weſtminſter*, 5l. for every ſuch fowl, with full coſts. But this not to extend to any pheaſant taken in the ſeaſon allowed by this act, and kept in any mew or breeding place. Within what times taking them in any kind ſhall be prohibited.

IV. Of pigeons.

1. A lord of a manor may build a dove-coat upon his own land, parcel of the manor; but a tenant of a manor cannot do it without the lord's licence. 3 *Salk.* 248. But any freeholder may build a dove-coat on his own ground. *Cro. El.* 548. *Cro. Ja.* 382. Who may erect a dove coat.

2. And it hath been adjudged, that erecting of a dove-houſe is not a common nuſance, nor preſentable in the leet. *Cro. Jac.* 490, 1. Dove-coat not a nuſance.

3. By the 1 *J.* *c.* 27. *ſ.* 2. Every perſon who ſhall ſhoot at, kill, or deſtroy any houſe-dove or pigeon with any gun or bow; or ſhall take, kill, or deſtroy the ſame with ſetting dogs and nets, or with any manner of nets, ſnares, engines, or inſtruments whatſoever; ſhall, on conviction before two juſtices where the offence ſhall be committed or the offender apprehended, by confeſſion, or oath of two witneſſes, be committed to gaol three months, unleſs he pay to the churchwardens for the uſe of the poor of the pariſh where the offence was committed or the offender apprehended reſpectively, 20s. for every pigeon, or after one month after his commitment, become bound Killing with dogs, nets, or engines.

by

by recognizance with two ſureties, before two juſtices, in 20l. apiece, not to offend again in like manner. The recognizance to be returned to the next ſeſſions.

And by the 2 *G.* 3. *c.* 29. If any perſon ſhall ſhoot at with an intent to kill or by any means kill or take, with a wilful intent to deſtroy any houſe-dove or pigeon, and ſhall be thereof convicted, by confeſſion or oath of one witneſs, before one juſtice where the offence was committed or the party apprehended, he ſhall forfeit 20s. to the proſecutor; and if not forthwith paid, ſuch juſtice may commit him to the gaol or houſe of correction, not exceeding 3 calendar months nor leſs than one, unleſs the forfeiture ſhall be ſooner paid. But this not to extend to the owners of dove-coats, with regard to their own pigeons. And perſons convicted on this act, ſhall not be convicted on any former act: and proſecutions on this act ſhall be commenced and carried on with effect within two months after the offence committed: and perſons impriſoned for default of payment of the penalty, ſhall not be liable afterwards to pay ſuch penalty.

Pigeons treſpaſſing.

4. But if the pigeons come upon my land, and I kill them; the owner hath no remedy againſt me; tho' I may be liable to the ſtatutes which make it penal to deſtroy them. *Cro. Ja.* 492.

Pigeons to go to the heir.

5. Doves in a dove-houſe, young and old, ſhall go to the heir, and not to the executor. 1 *Inſt.* 8.

V. Of wild ducks, wild geeſe, and other water fowl.

Shooting water fowl.

1. Every perſon who ſhall ſhoot at, kill, or deſtroy with any gun or bow, any mallard, duck, teal, or widgeon; and the ſame be proved by confeſſion, or oath of two witneſſes, before two juſtices;—ſhall be committed to gaol for three months, unleſs he pay to the churchwardens for the uſe of the poor, 20s. for each fowl, or after one month after commitment become bound by recognizance with two ſureties, before two juſtices, in 20l. each, not to offend again in like manner: Which recognizance ſhall be returned to the next ſeſſions. 1 *J. c.* 27. *ſ.* 2.

Not to be taken in the moulting ſeaſon.

2. No perſon, between the laſt day of *May* and the laſt day of *Auguſt* yearly, ſhall take, or cauſe to be taken, any wild ducks, mallards, widgeons, teals, or wild geeſe, with nets or other engines; on pain of a year's impriſonment, and to forfeit for every fowl ſo taken 4d. half to the king, and half to him that will

ſue

ſue by action of debt: Alſo the juſtices of the peace may enquire of, hear and determine the ſame, as in caſes of treſpaſs. 25 *H.* 8. *c.* 11.

Nevertheleſs, any gentleman, or any other that may diſpend 40s. a year of freehold, may hunt and take ſuch wild fowl with their ſpaniels only, without uſing a net or other engine except the long bow. *id.*

But by a ſubſequent ſtatute, if any perſon whatſoever (between *June* 1. and *Oct.* 1. yearly, 10 *G.* 2. *c.* 32.) ſhall by hays, tunnels, or other nets, drive and take any wild duck, teal, widgeon, or any other water fowl, in any place of reſort for wild fowl in the moulting ſeaſon; and ſhall be convicted thereof before one juſtice by the oath of one witneſs; he ſhall for every ſuch fowl forfeit 5s. half to the informer, and half to the poor, by diſtreſs, rendring the overplus above the penalty and charges of diſtreſs; for want of diſtreſs, to be committed to the houſe of correction not exceeding one month, nor leſs than 14 days, to be whipt and kept to hard labour. And the nets to be ſeized and deſtroyed in the preſence of the juſtice. 9 *An.* *c.* 25. *ſ.* 4.

3. No perſon from *March* 31. to *June* 30. yearly, ſhall take or deſtroy the eggs of any mallard, teal, or other water fowl; on pain of a year's impriſonment, and of forfeiting for every egg one penny, half to the king, and half to him that will ſue by action of debt; or, the juſtices of the peace may determine the ſame as in caſes of treſpaſs. 25 *H.* 8. *c.* 11. Deſtroying their eggs.

VI. Of heath fowl or moor game.

1. If any perſon whatſoever ſhall take or kill any moor, heath-game, or grouſe, in the night time; he ſhall, on conviction before one juſtice, on oath of one witneſs, forfeit 5l. half to the informer, and half to the poor, by diſtreſs; for want of diſtreſs, to be ſent to the houſe of correction three months for the firſt offence, and for every other offence four months. 9 *An.* *c.* 25. *ſ.* 3. Killing in the night.

2. Every perſon who ſhall ſhoot at, kill, or deſtroy, with any gun or bow, any grouſe, heath-cock, or moor game; ſhall on conviction before two juſtices, by confeſſion, or oath of two witneſſes, be committed to gaol for three months, unleſs upon conviction he pay to the churchwardens for the uſe of the poor, 20s. for each fowl, or, after one month after his commitment, become bound by recognizance with two ſureties in 20l. each, before Shooting.

before two juſtices, not to offend again in like manner: the recognizance to be returned to the next ſeſſions. 1 *J. c.* 27. *ſ.* 2.

Within what times only to be killed.

3. No perſon ſhall, upon any pretence whatſoever, take, kill, carry, ſell, buy, or have in his poſſeſſion or uſe, any heath fowl commonly called black-game, between *Jan.* 1. and *Aug.* 20. or any grouſe, commonly called red game, between *Dec.* 1. and *July* 25. yearly; on pain of forfeiting, on conviction by one witneſs in any of the courts of record at *Weſtminſter*, 5 l. for every ſuch fowl, to him who ſhall ſue, with full coſts. 2 *G.* 3. *c.* 19.

Burning ling.

4. For the better preſerving the red and black game of grouſe commonly called heath-cocks, or heath-polts, no perſon whatſoever on any mountains, hills, heaths, moors, foreſt, chaſes, or other waſtes, ſhall preſume to burn between *Feb.* 2. and *June* 24. any grig, ling, heath, furze, goſs, or fern; on pain of being committed to the houſe of correction, for any time not exceeding one month, nor leſs than ten days, there to be whipt and kept to hard labour. 4 & 5 *W. c.* 23. *ſ.* 11.

As here is no method of conviction directed for this offence, the juſtices of the peace ſeem to have no cognizance thereof; but the trial and conviction muſt be at the aſſizes, or in the courts at *Weſtminſter*.

In the 5 *An. c.* 14. there are particular directions concerning the burning of ling, heath, or brakes in *Sherwood* foreſt, and other places in *Nottinghamſhire*, which not being of general concern are here omitted.

VII. Of herons.

Shooting herons.

1. Every perſon who ſhall ſhoot at, kill or deſtroy, any heron, with gun or bow, ſhall on conviction before two juſtices, by confeſſion, or oath of two witneſſes, be committed to gaol for three months, unleſs on conviction he pay to the churchwardens for the uſe of the poor, 20 s. for each heron, or after one month from his commitment, become bound by recognizance with two ſureties in 20 l. each, before two juſtices, not to offend again in like manner: The recognizance to be returned to the next ſeſſions. 1 *J. c.* 27. *ſ.* 2.

None ſhall take but by hawking.

2. No perſon, without his own ground, ſhall ſlea, take, or cauſe to be taken, by mean of craft or engine, any herons, unleſs it be with hawking; or with long bow; on pain of 6 s. 8 d. to him who ſhall ſue by action of debt; or the ſeſſions may call

call before them perſons ſuſpected, and examine them; and if found in default, may commit them till they have found ſurety for payment of the forfeiture to the king; and the juſtices ſhall have the tenth part of the forfeiture for their labour. 19 *H.* 7. *c.* 11.

3. And no perſon, without his own ground, ſhall take any young herons out of the neſt; on pain of 10 s. in like manner for every young heron. 19 *H.* 7. *c.* 11. Young herons.

4. And if any perſon from *March* 31. to *June* 30. ſhall take or deſtroy the eggs of any heron; he ſhall be impriſoned for a year, and forfeit for every egg 8 d. half to the king, and half to him that will ſue by action of debt, or before the juſtices of the peace. 25 *H.* 8. *c.* 11. Eggs.

VIII. Of other fowl.

In general; No manner of perſon, from the laſt day of *March* to the laſt day of *June* yearly, ſhall by day or night, take, or deſtroy any eggs of any kind of wild fowl, from or in any neſt or place, where they ſhall chance to be laid by any kind of the ſame wild fowl; on pain of impriſonment for a year, and to forfeit for every egg of a buſtard 20 d. of a bittour or ſhovelard 8 d. and of other wild fowl (except crows, ravens, boſcards, and other fowl not uſed to be eaten) 1 d. half to the king, and half to him that will ſue by action of debt: Alſo the juſtices of the peace may determine the ſame, as in caſes of treſpaſs. 25 *H.* 8. *c.* 11. *

* With regard to fowl not uſed to be eaten, together with certain other noxious animals, there were proviſions made by an ancient ſtatute, viz. 8 *El.* *c.* 15. intitled, *An act for the preſervation of graine*, which it were to be wiſhed might be revived, with a proper conſideration of the difference of the value of money betwixt that time and the preſent; by which it was required, that the churchwardens ſhould levy by an aſſeſſment, and pay, for the heads of every three old crows, choughes, or rookes, 1 d; of ſixe young crows, choughes, or rookes, 1 d; and for every ſixe egges of any of them, 1 d; for every twelve ſtares heads, 1 d; for every heade of merten hawks, furſekytte, moldkytte, buſarde, ſchagge, carmeraunt, or ryngtayle, 2 d; and for two egges of them 1 d; for every iron or oſpraye's heade, 4; for the heade of every wood wall, pye, jay, raven, kyte, or king's fiſher, 1 d; bulfynce,

VII. Laws for preſerving the game of fiſh in particular.

There are ſome acts relating to this ſubject, of which, being of leſs general concern, it is thought ſufficient to inſert only the titles; *viz.*

(1) An act for the preſervation of fiſhing in the river of *Severn*. 30 *C.* 2. *c.* 9.

(2) An act for the increaſe and better preſervation of ſalmon and other fiſh, in the rivers within the counties of *Southampton* and *Wilts*. 4 *An.* *c.* 21. In which ſome alterations are made by the 1 *G.* *ſt.* 2. *c.* 18.

(3) An act for the better preſervation and improvement of the fiſhery within the river of *Thames*, and for regulating and governing the company of fiſhermen of the ſaid river. 9 *An.* *c.* 26.

(4) An act for the more effectual preſervation and improvement of the ſpawn and fry of fiſh in the river of *Thames*, and waters of *Medway*; and for the better regulating the fiſhery thereof. 30 *G.* 2. *c.* 21.

What follows ſeems beſt reducible under theſe heads:

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bulfynce, or other bird that devoureth the blowth of fruit, 1 d; for the heade of every foxe or gray, 12 d; and for the heade of every fytchewe, polcat, weſel, ſtote, fayre, bade, or wylde cat, 1 d; for the heads of every otter or hedgehogge, 12 d; for the heads of three rattes or twelve miſe, 1 d; for the heade of every want or moldwarpe, 1 halfpenny.

And by another ancient ſtatute 24 *H.* 8. *c.* 10. Every townſhip was required to keep a crow-net, to deſtroy crows, rooks, and choughs.

There is ſome ſhadow of theſe regulations ſtill remaining in ſome pariſhes, where they give rewards for deſtroying ſeveral of the aboveſaid noxious fowl and vermin. Theſe ſtatutes were ſuffered to expire, probably becauſe in a ſhort time there would be no need of their continuance; but it might be convenient nevertheleſs, to revive the like proviſions from time to time; and, amongſt the reſt of the ravenous tribe, to ſet a price now at length upon the head of that diſtinguiſhed fowl, for the ſake of which moſt of the ancient laws concerning the winged game were enacted, and which it was felony to deſtroy. But now the current hath received a contrary direction; and the hawk himſelf deſtroys more game, than gunpowder and hailſhot which have uſurped his empire.

I. The penalty of fiſhing in ponds and other private fiſheries.
II. Rules about the ſize, and preſerving the breed of fiſh.
III. Rules concerning fiſhing in or near the ſea.
IV. Importing fiſh.

I. The penalty of fiſhing in ponds and other private fiſheries.

Who may erect a fiſh pond.

1. Any man may erect a fiſh pond without licence; becauſe it is a matter of profit, and for the increaſe of victuals. 2 *Inſt.* 199.

Three years impriſonment and fine.

2. If any treſpaſſers in ponds be thereof attainted at the ſuit of the party, great and large amends ſhall be awarded according to the treſpaſs; and they ſhall have three years impriſonment, and after ſhall make fine at the king's pleaſure (if they have whereof) and then ſhall find good ſurety, that after they ſhall not commit the like treſpaſs: And if they have not whereof to make fine, after three years impriſonment, they ſhall find like ſurety; and if they cannot find like ſurety they ſhall abjure the realm. And if none ſue within the year and day, the king ſhall have the ſuit. 3 *Ed.* 1. *c.* 20.

Note; Thoſe are treſpaſſers in ponds, who endeavour to take fiſh therein. 2 *Inſt.* 200.

Three months impriſonment and treble damages.

3. If any perſon ſhall unlawfully break, cut, or deſtroy any head or dam of a fiſh pond, or ſhall wrongfully fiſh therein, with intent to take or kill fiſh; he ſhall on conviction at the ſuit of the king, or of the party, at the aſſizes or ſeſſions, be impriſoned three months, and pay treble damages; and after the three months expired ſhall find ſureties for his good abearing for ſeven years, or remain in priſon till he doth. 5 *El. c.* 21. *ſ.* 2, 6.

Treble damages, and 10s. to the poor.

4. Whereas divers idle, diſorderly, and mean perſons, betake, themſelves to the ſtealing, taking, and killing of fiſh, out of ponds, pools, motes, ſtews, and other ſeveral waters and rivers, to the great damage of the owners thereof; it is enacted, that if any perſon ſhall uſe any net, angle, hair, nooſe, troll, or ſpear; or ſhall lay any wears, pots, fiſh hooks, or other engines; or ſhall take any fiſh by any means or device whatſoever, or be aiding thereunto, in any river, ſtew, pond, mote, or other wa-

ter, *without the consent of the lord or owner of the water*; and be thereof convicted by confession, or oath of one witness, before one justice, in one month after the offence; every such offender in stealing, taking or killing fish, shall for every such offence give to the party injured such recompence and in such time as the justice shall appoint, not exceeding treble damages; and moreover shall pay down to the overseers for the use of the poor, such sum, not exceeding 10 s as the justice shall think meet: In default of payment, to be levied by distress; for want of distress, to be committed to the house of correction not exceeding one month, unless he enter into bond with one surety to the party injured, not exceeding 10 l. never to offend in like manner. 22 & 23 *C.* 2. *c.* 25. *s.* 7.

And the justices may take, cut, and destroy all such angles, spears, hairs, nooses, trolls, wears, pots, fish hooks, nets or other engines, wherewith such offender shall be apprehended. *s.* 8.

Persons aggrieved may appeal to the next sessions, whose determination shall be final, if no title to any land, royalty, or fishery be therein concerned. *s.* 9.

M. 32 *G.* 2. *K.* and *Mallinson.* A conviction for *taking and killing fish*, not setting forth (amongst other particulars) that the defendant had not the licence or *consent of the owner*, was adjudged to be bad. For, by the court, The offence provided against by the act is *stealing* fish, taking it without the consent of the owner. The jurisdiction given to the justice is over every such offender in stealing, taking, and killing. But the man here is not convicted of any offence; for he is not charged with stealing, nor even with taking and killing the fish of another person, or in another person's pond. It may be his own pond, and his own fish, for any thing that is stated to the contrary. And the conviction was quashed. *Burrow, Mansfield.* 679.

Engines to be seized.

5. Whereas divers idle, disorderly, and mean persons, have and keep nets, angles, leaps, piches and other engines for the taking and killing of fish out of the ponds, waters, rivers, and other fisheries, to the damage of the owners thereof, therefore no person hereafter shall have or keep any net, angle, leap, piche, or other engine for the taking of fish; other than the makers and sellers thereof, and other than the owner and occupier of a river or fishery; and except fishermen and their apprentices lawfully authorized in navigable rivers. And the owner or occupier of the river or fishery, and every other person by

by him appointed, may ſeize, detain, and keep to his own uſe, every net, angle, leap, piche, and other engine, which he ſhall find uſed or laid, or in the poſſeſſion of any perſon fiſhing in any river or fiſhery, without the conſent of the owner or occupier thereof. And alſo any perſon, authorized by a juſtice's warrant, may in the day time ſearch the houſes, outhouſes, and other places of any perſon hereby prohibited to have or keep the ſame, who ſhall be ſuſpected to have or keep in his cuſtody or poſſeſſion any net, angle, leap, piche, or other engine aforeſaid, and ſeize and keep the ſame to his own uſe, or cut or deſtroy the ſame, as things by this act prohibited to be kept by perſons of their degree. 4 & 5 *W.* *c.* 23. *ſ.* 5, 6.

Tranſportation, or pecuniary forfeiture.

6. If any perſon ſhall enter into any park or paddock fenced in, and incloſed, or into any garden, orchard, or yard, adjoining or belonging to any dwelling houſe, in or through which park or paddock, garden, orchard, or yard, any river or ſtream of water ſhall run or be, or wherein ſhall be any river, ſtream, pond, pool, moat, ſtew, or other water, and by any ways, means, or device whatſoever, ſhall ſteal, take, kill, or deſtroy, any fiſh bred, kept, or preſerved therein, without the conſent of the owner thereof; or ſhall be aiding or aſſiſting therein; or ſhall receive or buy any ſuch fiſh, knowing the ſame to be ſo ſtolen or taken as aforeſaid; and ſhall be convicted thereof at the aſſizes, within ſix calendar months after the offence committed; he ſhall be tranſported for ſeven years. And any offender, ſurrendring himſelf to a juſtice, or being apprehended or in cuſtody for ſuch offence or on any other account, who ſhall make confeſſion thereof, and a true diſcovery on oath of his accomplice or accomplices, ſo as ſuch accomplice may be apprehended, and ſhall on trial give evidence ſo as to convict ſuch accomplice, ſhall be diſcharged of the offence ſo by him confeſſed. 5 *G.* 3. *c.* 14. *ſ.* 1, 2.

And if any perſon ſhall take, kill, or deſtroy, or attempt to take, kill, or deſtroy, any fiſh in any river or ſtream, pond, pool, or other water (not being in any park or paddock, or in any garden, orchard, or yard, adjoining or belonging to any dwelling houſe, but in any other incloſed ground being private property); he ſhall on conviction before one juſtice, on the oath of one witneſs, forfeit 5 l. to the owner or owners of the fiſhery of ſuch river or ſtream of water, or of ſuch pond, pool, moat, or other water: And ſuch juſtice, on complaint

upon oath, may iſſue his warrant to bring the perſon complained of before him; and if he ſhall be convicted before ſuch juſtice, or any other juſtice of the county or place, he ſhall immediately after conviction pay the ſaid penalty of 5 l. to ſuch juſtice, for the uſe of ſuch perſon as the ſame is hereby appointed to be paid unto; and in default thereof, ſhall be committed by ſuch juſtice to the houſe of correction for any time not exceeding ſix months, unleſs the forfeiture ſhall be ſooner paid: Or ſuch owner of the fiſhery may bring an action for the penalty (within ſix calendar months after the offence) in any of the courts of record at *Weſtminſter*. *ſ.* 3, 4.

Provided, that nothing in this act ſhall extend to ſubject any perſons to the penalties thereof, who ſhall fiſh, take, or kill, and carry away, any fiſh in any river or ſtream of water, pond, pool, or other water, wherein ſuch perſon ſhall have a juſt right or claim to take, kill, or carry away ſuch fiſh. *ſ.* 5.

[There ſeem to be ſome difficulties upon the face of this act; but the general purport thereof ſeemeth to be, for the protection of *private fiſheries*, and not as intending to prohibit perſons otherwiſe qualified, from taking any fiſh at all in any place whatſoever, unleſs ſuch perſon hath an excluſive grant from the crown of a fiſhery within certain bounds.

As to the *tranſportation* clauſe; the proſecution muſt be at the aſſizes within *ſix calendar months* after the offence committed. It would have anſwered the purpoſe more effectually, if the proſecution had been directed to be at the *next* aſſizes; for the aſſizes are not held preciſely at ſix months diſtance, ſo that an offender in the intermediate ſpace may eſcape: and in ſome counties the aſſizes are held but once a year.

But the greateſt difficulty is upon the other clauſe, concerning the killing of fiſh, not in any paddock, garden, orchard, or the like, but within any other incloſed ground being private property. By this it ſeemeth generally to be underſtood, that no perſon (not having a private fiſhery) may kill fiſh, except in a river running thro' or by a common. But the application of the penalty ſeemeth to reſtrain the generality of the clauſe to private fiſheries only. For the penalty is given to the *owner of the fiſhery*. A lord of a manor, as ſuch, doth not ſeem to have an excluſive right to all the fiſh within his manor, any more than to any other game. Theſe animals, being *feræ naturæ*, are originally the king's; and are granted

by him, with the advice and aſſent of the lords ſpiritual and temporal and commons in parliament aſſembled, to perſons qualified by eſtate or degree, as the acts of parliament for that purpoſe ſet forth. In ſuch caſe, no lord of a manor or other hath an excluſive privilege; but if another perſon comes upon his ground, who hath no right upon ſuch ground, but hath a right by qualification to kill game, ſuch perſon is liable to an action, not for killing game, but only for the treſpaſs. But a man by grant, or by preſcription (as it ſeemeth, which is evidence of a grant), may claim to have an excluſive fiſhery within certain limits; and this ſtatute ſeemeth intended to protect ſuch fiſhery. And the proviſo or exception ſeemeth to be inſerted on the behoof of perſons qualified; for it could not be ſuppoſed that the act intended to prohibit the owners themſelves of fiſheries from the taking of fiſh within their own liberties. But as there is a variety of opinions upon the aforeſaid clauſe, an explanation thereof might be of uſe.]

7. By the Black act before mentioned, if any perſon being armed and diſguiſed, ſhall unlawfully ſteal or take away any fiſh out of any river or pond; or (whether armed and diſguiſed or not) ſhall unlawfully and maliciouſly break down the head or mound of any fiſh pond, whereby the fiſh ſhall be loſt or deſtroyed, or ſhall reſcue any perſon in cuſtody for ſuch offence, or procure any other to join with him therein; he ſhall be guilty of felony without benefit of clergy. Felony, without benefit of clergy.

II. Rules concerning the aſſize, and preſerving the breed of fiſh.

1. If any perſon ſhall lay or draw any net, engine, or other device, or cauſe any thing to be done in the *Severn*, *Dee*, *Wye*, *Teame*, *Were*, *Tees*, *Ribble*, *Merſey*, *Dun*, *Air*, *Ouze*, *Swaile*, *Calder*, *Wharf*, *Eure*, *Darwent*, or *Trent*, whereby the ſpawn or fry of ſalmon, or any kepper or ſhedder ſalmon, or any ſalmon not 18 inches from the eye to the extent of the middle of the tail, ſhall be taken and killed; or ſhall ſet any bank, dam, hedge, ſtank, or net croſs the ſame, whereby the ſalmon may be taken, or hindred from paſſing up to ſpawn; or ſhall between *July* 31. and *Nov.* 12. (except in the *Ribble*, where they may be taken between *Jan.* 1. and *Sept.* 15.) take any ſalmon of any kind in any of the ſaid rivers; or ſhall, after *Nov.* 12. yearly, fiſh there for ſalmon with any net Salmon.

leſs than 2 ½ inches in the meſh; he ſhall, on conviction, in one month, before one juſtice, on view, confeſſion, or oath of one witneſs, forfeit 5 l. and the fiſh, nets, and engines; half the ſaid ſum to the informer, and half to the poor, by diſtreſs; for want of diſtreſs, to be committed to the houſe of correction or gaol, not more than three months, nor leſs than one, to be kept to hard labour, and ſuffer ſuch other corporal puniſhment as the juſtice ſhall think fit: The nets and engines to be cut or deſtroyed, in preſence of the juſtice: The banks, dams, hedges, and ſtanks, to be demoliſhed at the charge of the offender, to be levied in like manner. 1 *G. ſt.* 2. *c.* 18. *ſ.* 14.

Note; It is not ſaid who ſhall have the fiſh; ſo that it ſeemeth that they are forfeited to the king.

And no ſalmon out of the ſaid rivers ſhall be ſent to *London*, under ſix pounds weight; on pain that the ſender, buyer, or ſeller, on the like conviction, ſhall forfeit 5 l. and the fiſh, half to the informer, and half to the poor, by diſtreſs; for want of ſufficient diſtreſs, to be committed to the houſe of correction or gaol, to be kept to hard labour for three months, if not paid in the mean time. *id. ſ.* 15.

And perſons aggrieved may appeal to the next ſeſſions. *id. ſ.* 17.

Salmon ſpawn, and ſmelts.

2. No ſalmon ſhall be taken in the *Humber*, *Ouze*, *Trent*, *Done*, *Arre*, *Darwent*, *Wharfe*, *Nid*, *Yore*, *Swale*, *Teſe*, *Tine*, *Eden*, or any other water wherein ſalmon are taken, between *Sept.* 8. and *Nov.* 11. Nor ſhall any young ſalmon be taken at mill-pools (nor in other places, 13 *R.* 2. *ſt.* 1. *c.* 19.) from *Midapril* to *Midſummer*; on pain of having the nets and engines burnt for the firſt offence, for the ſecond, impriſonment for a quarter of a year; for the third, a whole year; and as the treſpaſs increaſeth, ſo ſhall the puniſhment. And overſeers ſhall be aſſigned to inquire hereof. 13 *Ed.* 1. *ſt.* 1. *c.* 47. That is, under the great ſeal, and by authority of parliament. 2 *Inſt.* 477.

And no perſon ſhall put in the waters of *Thamiſe*, *Humber*, *Ouze*, *Trent*, nor any other waters, in any time of the year, any nets called ſtalkers, nor other nets or engines whatſoever, by which the fry or breed of ſalmons, lampreys, or any other fiſh may in any wiſe be taken or deſtroyed; on the like pain. 13 *R.* 2. *ſt.* 1. *c.* 19.

And the waters of *Lon*, *Wyre*, *Merſee*, *Rybbyl*, and all other waters in *Lancaſhire*, ſhall be put in defence as to taking

taking of ſalmon, from *Michaelmas* to *Candlemas*, and in no other time of the year. And conſervators ſhall be appointed in like manner. 13 *R.* 2. *ſt.* 1. *c.* 19.

And the juſtices of the peace (and the mayor of *London* on the *Thames* and *Medway*) ſhall ſurvey the offences in both the acts abovementioned; and ſhall ſurvey and ſearch all the wears in ſuch rivers, that they ſhall not be very ſtrait for the deſtruction of ſuch fry and brood, but of reaſonable wideneſs after the old aſſize uſed or accuſtomed; and they ſhall appoint under-conſervators, who ſhall be ſworn to make like ſurvey, ſearch and puniſhment. And they ſhall inquire in ſeſſions, as well by their office, as at the information of the under-conſervators, of all defaults aforeſaid, and ſhall cauſe them which ſhall be thereof indicted, to come before them; and if they be thereof convict, they ſhall have impriſonment, and make fine at the diſcretion of the juſtices: and if the ſame be at the information of an under-conſervator, he ſhall have half the fine. 17 *R.* 2. *c.* 9.

3. By the 1 *El. c.* 17. No perſon, of what eſtate, degree, and condition ſoever he be, ſhall take and kill any young brood, ſpawn, or fry of fiſh; nor ſhall take and kill any ſalmon or trouts, not being in ſeaſon, being kepper or ſhedder; nor any pike or pickerel not being in length 10 inches fiſh or more; nor any ſalmon not being in length 16 inches fiſh; nor any trout not being in length eight inches fiſh; nor any barbel not being in length 12 inches: and no perſon ſhall fiſh or take fiſh by any device, but only with net or tramel, whereof the meſh ſhall be two inches and a half broad (angling excepted, and except ſmelts, loches, minnies, bulheads, gudgeons, and eels): on pain of forfeiting 20s. for every offence, and alſo the fiſh, nets, and engines. Spawn in general and fiſh under ſize and out of ſeaſon.

(Note, in ſome editions of the ſtatutes it is 20l. in other 20s. in the record it is not diſtinguiſhable whether it is pounds or ſhillings. The latter ſeems more adequate to the offence.)

And the conſervators of rivers may inquire hereof by a jury; and in ſuch caſe they ſhall have the fines.

The leet alſo may inquire hereof; and then the forfeiture ſhall go to the lord of the leet. And if the ſteward do not charge the jury therewith, he ſhall forfeit 40s. half to the king, and half to him that ſhall ſue. And if the jury conceal the offence, he may impanel another jury to inquire of ſuch concealment; and if it is found, the former

former jury ſhall forfeit every one 20s. to the lord of the leet.

And if the offence is not preſented in the leet within a year, then it may be heard and determined at the ſeſſions or aſſizes. (Saving the right of the conſervators.)

And by the 33 *G.* 2. *c.* 27. No perſon ſhall take, or knowingly have in his poſſeſſion either in the water or on ſhore, or ſell or expoſe to ſale, any ſpawn, fry, or brood of fiſh, or any unſizeable fiſh, or fiſh out of ſeaſon, or any ſmelt not five inches long: and any perſon may ſeize the ſame together with the baſkets and package, and charge a conſtable or other peace officer with the offender and with the goods, who ſhall carry them before a juſtice; and on conviction before ſuch juſtice, the ſame ſhall be forfeited and delivered to the proſecutor; and the offender ſhall beſides forfeit 20s. to be levied by diſtreſs by warrant of ſuch juſtice, and diſtributed half to the proſecutor and half to the poor of the pariſh where the offence was committed (and any inhabitant of ſuch pariſh, nevertheleſs, may be a witneſs); for want of ſufficient diſtreſs, to be committed to the houſe of correction to be kept to hard labour for any time not exceeding three months, unleſs the forfeiture be ſooner paid.——Provided, that the juſtice may mitigate the ſaid penalty, ſo as not to remit above one half. Perſons aggrieved may appeal to the next ſeſſions.—And the form of the conviction may be this:

Be it remembred, that on this——day of——in the——year of the reign of——*A. O.* is convicted before me——one of his majeſty's juſtices of the peace for the——of——for——and I do adjudge him to pay and forfeit the ſum of——. Given under my hand and ſeal the day and year aboveſaid. *ſ.* 13, 15, 16, 17, 18, 19.

Nets ſtanding day and night.

4. No perſon ſhall faſten any nets over rivers, to ſtand continually day and night; on pain of an hundred ſhillings to the king. 2 *H.* 6. *c.* 15.

III. Rules concerning fiſhing in or near the ſea.

Lobſters.

1. No perſon ſhall take, kill, or deſtroy any lobſters on the coaſt of *Scotland*, from *June* 1. to *Sept.* 1. on pain of 5l. to be recovered by any perſon who ſhall inform and ſue for the ſame, on a ſummary complaint before two juſtices

tices of the ſhire on the coaſt where the offence ſhall be committed. 9 *G.* 2. *c.* 33. *ſ.* 4.

Erecting a new wear.

2. Every perſon who ſhall ſet up any new wear along the ſea ſhore, or in any haven, harbour, or creek; or within five miles of the mouth of any haven or creek, ſhall on conviction before one juſtice, or mayor, forfeit for every offence 10*l.* half to the king, and half to him that ſhall ſue; to be levied by the conſtables or churchwardens by diſtreſs. 3 *J.* *c.* 12. *ſ.* 2.

Spawn of ſea fiſh.

3. Every perſon who ſhall willingly take, deſtroy, or ſpoil any ſpawn, fry, or brood of any ſea fiſh, in any wear or other engine or device whatſoever; ſhall forfeit for every offence 10*l.* in like manner. 3 *J.* *c.* 12. *ſ.* 2.

Size of nets at ſea.

4. And every perſon who ſhall fiſh in any haven, harbour, or creek, or within five miles of the mouth of any haven, harbour, or creek of the ſea, with any draw-net, or drag-net under three inches meſh, *viz.* 1 ½ inch from knot to knot (except for the taking of ſmoulds in *Norfolk* only), or with any nets with canvas, or other engine or device, whereby the ſpawn, fry, or brood of ſea fiſh may be deſtroyed; ſhall in like manner forfeit ſuch net, and alſo 10*s.* for every offence, half to the poor, and half to him that ſhall ſue. 3 *J.* *c.* 12. *ſ.* 2.

But this act ſhall not extend to any net of leſſer meſh, only for taking of herrings, pilchards, ſprats, or lavidnian. *id.* *ſ.* 3.

And by a ſubſequent ſtatute, if any perſon ſhall uſe at ſea, on the *Engliſh* coaſt, any traul-net, drag-net, or ſet-net, for catching of any fiſh (except herrings, pilchards, ſprats or lavidnian) which hath the meſh leſs than 3 ½ inches from knot to knot; or which hath a falſe or double bottom; or ſhall put one net behind another; he ſhall, on conviction (after ſummons) before one juſtice where the offender reſides or ſhall be found, on oath of two witneſſes, in one month after the offence, forfeit the ſame, and alſo 20*l.* half to the informer, and half to the poor, by diſtreſs; for want of ſufficient diſtreſs, to be committed to gaol for twelve months; and the nets to be burnt. 1 *G.* *ſt.* 2. *c.* 18. Perſons aggrieved may appeal to the next ſeſſions. *id.*

Size of ſea fiſh.

5. By the ſame act of 1 *G.* *ſt.* 2. if any perſon ſhall bring to ſhore, or expoſe to ſale any fiſh leſs than the following ſizes from the eyes to the extent of the tail, *viz.* bret or turbet 16 inches, brill or pearl 14, codlin 12, whiting 6, baſs and mullet 12, ſole 8, place or dab 8, flounder 7; he ſhall forfeit the fiſh to the poor; and alſo

20*s.*

20 s. half to the informer, and half to the poor; to be levied in the like manner: for default of payment, or of ſufficient diſtreſs, to be ſent to the next houſe of correction, or other common gaol of the county, to be ſeverely whipt and kept to hard labour ſix days, and not longer than 14. Perſons aggrieved may appeal to the next ſeſſions.

But by the 33 *G.* 2. *c.* 27. Bret or turbot, brill or pearl, altho' under the ſaid dimenſions, may be expoſed to ſale, ſo as the ſame be not ſold by retail for above 6 d. a pound. And if any greater price ſhall be demanded or taken, or ſuch fiſh ſhall not be weighed and meaſured if required; the ſame ſhall be forfeited, and the offender ſhall alſo forfeit 20 s. to be recovered, mitigated, and applied, as the penalties in the ſaid act mentioned under the laſt head, relating to the ſpawn of fiſh, and fiſh under ſize, and out of ſeaſon: and the money paid ſhall be returned to the party who paid the ſame. *ſ.* 11.

IV. Importing fiſh.

May be ſeized. 1. If any ling, herring, cod, or pilchard, ſalmon, eels, or congers, taken by foreigners, ſhall be imported or expoſed to ſale; any perſon may ſeize the ſame, half for himſelf, and half for the poor. 18 *C.* 2. *c.* 2.

Penalty 100 l. 2. And by the 1 *G. ſt.* 2. *c.* 18. and 9 *G.* 2. *c.* 33. no fiſh taken by, or received of any foreigner, except proteſtants inhabiting in *England*, ſhall be imported (except eels, ſtock fiſh, anchovies, ſturgeon, botarge, or cavear, lobſter and turbet); on pain of 100 l. and the maſter of the veſſel 50 l. half to the poor and half to the informer who ſhall ſue in 12 months in any of the courts at *Weſtminſter*.

For fiſhing, ſo far as the ſalt duties are concerned therein, may be conſulted that part of the title Exciſe, which treateth of the duties upon ſalt.

The fiſh markets in *London* and *Weſtminſter* are regulated by the ſtatutes of 22 *G.* 2. *c.* 49. 29 *G.* 2. *c.* 39. 33 *G.* 2. *c.* 27. and 2 *G.* 3. *c.* 15. which are too large and not general enough to be here inſerted.

A.

A. Appointment of a gamekeper; on the 22 & 23 C. 2. c. 25. ſ. 2. 5 An. c. 14. ſ. 4. and 3 G. c. 11. ſ. 1.

I A. L. *eſquire, lord of the manor of* ——— *do hereby nominate, authoriſe, and appoint* A. G. *of* P. *in the county of* ——— *yeoman, to be my gamekeeper of and within my ſaid manor of* ——— *in the county aforeſaid, with full power licence, and authority to kill any hare, pheaſant, partridge, or any other game whatſoever, in and upon my ſaid manor of* ———, *for my ſole uſe, and immediate benefit; and alſo to take and ſeize all ſuch guns, bows, greyhounds, ſetting dogs, lurchers, or other dogs to kill hares or conies, ferrets, tramels, lowbels, hays, or other nets, harepipes, ſnares, or other engines for the taking and killing of conies, hares, pheaſants, partridges, or other game, as within the precincts of my ſaid manor of* ———*ſhall be uſed by any perſon or perſons who by law are prohibited to keep or uſe the ſame. Given under my hand and ſeal, this* ——— *day of* ——— *in the* ——— *year*, &c.

B. Warrant to ſearch for dogs and engines; on the 22 & 23 C. 2. c. 25. ſ. 2.

Weſtmorland. { To———

WHEREAS *complaint hath been made unto me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, upon the oath of* A. I. *of* ——— *in the ſaid county, yeoman, that he the ſaid* A. I. *hath good ground to ſuſpect and doth ſuſpect that* A. O. *of* ——— *aforeſaid in the county aforeſaid, yeoman, being a perſon in no reſpect qualified by the laws of this realm ſo to do, hath and keepeth in his cuſtody a greyhound* [gun, net, &c.] *to kill and deſtroy the game: Theſe are therefore to command you in his majeſty's name to enter into, and ſearch in the day time, the houſes, outhouſes, and other places of him the ſaid* A. O. *at* ——— *aforeſaid, and if you there find any greyhound*, &c. *that you ſeize and keep the ſame for the uſe of* A. L. *eſquire, lord of the manor of* ——— *in which manor the ſaid houſes, outhouſes, and other places, are ſituate and do lie, or otherwiſe that you cut in pieces or deſtroy the ſame. Given under my hand and ſeal the* ——— *day of* ——— *in the* ——— *year*, &c.

C.

C. Information againſt a perſon for keeping dogs or engines; on the 5 *An. c.* 14. *ſ.* 4.

Weſtmorland. THE *information and complaint of* A. I. *of*———*in the county of*———*yeoman, made before me* J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, the*———*day of*———*in the year*———*Who ſaith, That on the*———*day of*———*in the year*———*at the pariſh of*———*in the county aforeſaid, one* A. O. *of*———*in the county aforeſaid, ſhoemaker, did keep and uſe a certain dog called a greyhound* [or as the caſe is] *to kill and deſtroy the game, he the ſaid* A. O. *not being qualified by the laws of this realm ſo to do; whereby he the ſaid* A. O. *hath forfeited the ſum of five pounds. And thereupon he the ſaid* A. I. *prayeth the judgment of me the juſtice aforeſaid in the premiſſes, and that he may have one moiety of the ſaid forfeiture, according to the form of the ſtatute in that caſe made, and that the ſaid* A. O. *may be ſummoned to anſwer the premiſſes before me the juſtice aforeſaid.*

A. I.

Before me
J. P.

D. Summons thereupon.

Weſtmorland. { To the conſtable of———in the ſaid county.

WHEREAS *information and complaint hath been made before me* J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, that* A. O. *of*———*in the county aforeſaid, ſhoemaker, on the*———*day of*———*in the year*———*at the pariſh of*———*in the county aforeſaid, did keep and uſe a certain dog called a greyhound* [or as the caſe is] *to kill and deſtroy the game, he the ſaid* A. O. *not being qualified by the laws of this realm ſo to do: Theſe are therefore to require you forthwith to ſummon the ſaid* A. O. *to appear before me at*———*in the ſaid county, the*———*day of*———*at the hour of*———*to anſwer to the ſaid information and complaint, and to be further dealt with according to law. And be you then there, to certify what you ſhall have done in the execution hereof. Herein fail you not. Given under my hand and ſeal the*———*day of*——*in the year*——.

E.

E. Conviction of keeping dogs or engines; on the 5 *An. c.* 14. *ſ.* 4.

Weſtmorland. BE *it remembred, that on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth, at* ——— *in the county aforeſaid,* A. I. *of* ——— *cometh before me* J. P. *eſquire, one of the juſtices of our ſaid lord the king, aſſigned to keep the peace of our ſaid lord the king in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes and other miſdemeanors in the ſaid county committed, and giveth me the ſaid juſtice to underſtand and be informed, that on the* ——— *day of* ——— *in the* ——— *year aforeſaid, at the pariſh of* ——— *in the county aforeſaid, one* A. O. *of the pariſh aforeſaid in the county aforeſaid, ſhoemaker, not then having lands and tenements, nor any other eſtate of inheritance, in his own or his wife's right, of the clear yearly value of* 100l. per annum, *nor for term of life, nor any leaſe nor leaſes of* 99 *years, nor for any longer term, of the clear yearly value of* 150l. *nor then being ſon and heir apparent of an eſquire, nor of any other perſon of higher degree, nor the owner nor keeper of any foreſt, park, chaſe, or warren, nor gamekeeper to any lord or lady of a manor, did keep and uſe a certain dog, called a greyhound, to kill and deſtroy the game, againſt the form of the ſtatute in that caſe made and provided: And afterwards upon the aforeſaid day, and in the year firſt abovementioned, he the ſaid* A. O. *after having been duly ſummoned in this behalf before me the juſtice aforeſaid, appeareth and is preſent, in order to make his defence againſt the ſaid charge, and having heard the ſame, he the ſaid* A. O. *is aſked by me the ſaid juſtice, if he can ſay any thing for himſelf, why he the ſaid* A. O. *ſhould not be convicted of the premiſſes above charged upon him in form aforeſaid; who pleadeth that he is not guilty of the ſaid offence: nevertheleſs on the day aforeſaid in the year aforeſaid, at* ——— *aforeſaid, in the county aforeſaid, one credible witneſs, to wit,* A. W. *of* ——— *yeoman, cometh before me the aforeſaid juſtice, and before me the ſame juſtice upon his oath on the holy goſpel to him then and there by me the aforeſaid juſtice adminiſtred, depoſeth, ſweareth, and upon his oath aforeſaid affirmeth, and ſaith, that the aforeſaid* A. O. *on the* ——— *day of* ——— *aforeſaid, in the year aforeſaid at the pariſh of* ——— *aforeſaid, in the county aforeſaid, not then having lands and tenements, nor any other eſtate of inheritance, in his own or his wife's right, of the clear yearly value of* 100l. per annum,

nor

nor for term of life, nor any leaſe nor leaſes of 99 *years, nor for any longer term, of the clear yearly value of* 150*l. nor then being ſon and heir apparent of an eſquire, nor of any other perſon of higher degree, nor the owner nor keeper of any foreſt, park, chaſe, or warren, nor gamekeeper to any lord or lady of a manor, did keep and uſe a certain dog called a greyhound, to kill and deſtroy the game: And thereupon the aforeſaid* A. O. *the ——day of——in the year aforeſaid, at———aforeſaid, in the county aforeſaid, before me the ſame juſtice, by the oath of one credible witneſs aforeſaid, according to the form of the ſtatute aforeſaid, is convicted: And for his offence aforeſaid hath forfeited the ſum of five pounds of lawful money of* Great Britain, *to be diſtributed as the ſtatute aforeſaid doth direct. In witneſs whereof, I the ſaid juſtice to this preſent record of the conviction aforeſaid, have ſet my hand and ſeal at——— aforeſaid, in the county aforeſaid, the——day of——aforeſaid in the year aforeſaid.*

If he doth not appear upon the ſummons, the form may be varied accordingly; as is ſet forth ſpecially under the title Conviction.

F. Warrant to diſtrain 5*l.* for keeping dogs or engines; on the 5 *An. c.* 14. *ſ.* 4.

Weſtmorland. { To———————

WHEREAS A. O. *of———in the ſaid county, ſhoemaker, is this day convicted before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, upon the oath of* A. W. *a credible witneſs, for that he the ſaid* A. O. *being a perſon not qualified by the laws of this realm ſo to do, on the———day of———in the———year of the reign of———did keep and uſe in the pariſh of——— aforeſaid, in the county aforeſaid, a certain dog called a greyhound, to kill and deſtroy the game, by virtue whereof he the ſaid* A. O. *hath forfeited the ſum of* 5*l. to be diſtributed as herein after is mentioned: Theſe are therefore in his ſaid majeſty's name, to command you to levy the ſaid ſum by diſtreſs of the goods of him the ſaid* A. O. *and if within the ſpace of* [*four*] *days next after ſuch diſtreſs by you taken, the ſaid ſum, together with reaſonable charges of taking and keeping the ſaid diſtreſs, ſhall not be paid, that then you do ſell the ſaid goods ſo by you diſtrained, and out of the money ariſing by ſuch ſale* that

that you do pay one half of the ſaid ſum of 5 *l. to* A. I. *of*———*in the ſaid county, yeoman, who informed me of the ſaid offence, and the other half of the ſaid ſum of* 5 *l. to the overſeers of the poor of the pariſh of*———*aforeſaid, where the ſaid offence was committed, for the uſe of the poor of the ſaid pariſh; returning the overplus on demand unto him the ſaid* A. O. *the reaſonable charges of taking, keeping, and ſelling the ſaid diſtreſs, being firſt deducted. And if ſufficient diſtreſs cannot be found of the goods of the ſaid* A. O. *whereon to levy the ſaid ſum of* 5 *l. that then you certify the ſame to me, together with the return of this precept. Given under my hand and ſeal the*——— *day of*——— *in the*——— *year of*———

G. Commitment for want of diſtreſs, for keeping dogs and engines; on the 5 *An. c.* 14. *ſ.* 4.

Weſtmorland. { To the conſtable of———in the ſaid county, and to the keeper of the houſe of correction at——— in the ſaid county.

WHEREAS A. O. *of*——— *in the ſaid county, ſhoemaker, was on the*———*day of*———*in the*———*year of*——— *convicted before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, upon the oath of* A. W. *a credible witneſs, for that he the ſaid* A. O. *not being a perſon by the laws of this realm qualified ſo to do, on the*——— *day of*———*in the year aforeſaid, did keep and uſe in the pariſh of*———*aforeſaid, in the county aforeſaid, a certain dog called a greyhound, to kill and deſtroy the game, by virtue whereof he the ſaid* A. O. *hath forfeited the ſum of* 5 *l. of lawful money of* Great Britain; *And whereas on the ſaid*——— *day of*———*in the year aforeſaid, I did iſſue my warrant to the conſtable of*——— *to levy the ſaid ſum of* 5 *l. by diſtreſs and ſale of the goods of him the ſaid* A. O. *and to diſtribute the ſame according as is directed by the ſtatute in that behalf made; and whereas it duly appears to me, as well on the oath of the ſaid conſtable, as otherwiſe, that he the ſaid conſtable hath uſed his beſt endeavours to levy the ſaid ſum on the goods of the ſaid* A. O. *as aforeſaid, but that no ſufficient diſtreſs can be had whereon to levy the ſame: Theſe are therefore to command you the ſaid conſtable of*———*aforeſaid, to apprehend the body of the ſaid* A. O. *and him ſafely to convey to the houſe of correction at*———*in the ſaid*

 county,

county, and there deliver him to the ſaid keeper thereof, together with this precept. And I do hereby command you, the ſaid keeper of the ſaid houſe of correction, to receive into your cuſtody in the ſaid houſe of correction the ſaid A. O. *and him there ſafely to keep for the ſpace of three months: and for ſo doing this ſhall be your ſufficient warrant. Given under my hand and ſeal the———day of———in the ——year,* &c.

H. *Certiorari* bond, on a conviction for keeping dogs or engines; on the 5 *An. c.* 14. *ſ.* 2.

KNOW *all men by theſe preſents,* &c. *Whereas the above bound* A. O. *was lately convicted before* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the county of——— aforeſaid, of keeping and uſing at ———aforeſaid in the ſaid county, a greyhound to kill and deſtroy the game; And whereas the ſaid* A. O. *hath ſince his ſaid conviction ſued out his majeſty's writ of* certiorari *to remove the ſame, and the proceedings thereupon, before the king himſelf wherever he ſhall be in* England *on———* [the day of the return of the certiorari]: *The condition of the above obligation is ſuch, that if the abovebound* A. O. *do and ſhall (according to the true intent and meaning of the ſtatute in ſuch caſe made) well and truly pay to the ſaid* A. I. *within* 14 *days after the ſaid conviction ſhall be confirmed, or a* procedendo *granted thereupon, his full coſts and charges which he ſhall ſuſtain touching or concerning the ſaid conviction and removal thereof by the ſaid writ of* certiorari; *then the abovewritten obligation ſhall be void, otherwiſe of force.*

I. Warrant againſt a higler having game in his poſſeſſion; on the 5 *An. c.* 14. *ſ.* 2.

Weſtmorland. { To the conſtable of——

WHEREAS A I. *of——hath this day made information and complaint upon oath before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, that on the——day of——now laſt paſt,* A. O. *of—— in the pariſh of——in the county aforeſaid, inkeeper, at—— aforeſaid, in the pariſh and county aforeſaid, in the houſe of him the ſaid* A. O. *then and there had in his poſſeſſion one hare* [or, *did offer to ſell one hare,* or as the caſe ſhall be]

be] *he the ſaid* A. O. *being no ways qualified by the laws of this realm, to have the ſaid hare in his cuſtody or poſſeſſion; againſt the form of the ſtatute in that caſe made and provided: Theſe are therefore to command you, to bring the ſaid* A. O. *before me or ſome other of his majeſty's juſtices of the peace for the ſaid county, to anſwer the premiſſes, and to be further dealt withal according to law. Given under my hand and ſeal, the ———day of———in the———year*, &c.

K. Warrant to levy 5 l. on the goods of a higler convicted of having game in his cuſtody; on the 5 *An. c.* 14. *ſ.* 2.

Weſtmorland. { To the conſtable of——

WHEREAS A. O. *of ——— in the pariſh of ———in the county aforeſaid, higler, is on this preſent———day of———in the———year of the reign of———duly convicted before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, upon the oath of* A. W. *a credible witneſs, for that he yhe ſaid* A. O. *on the———day of———in the——— tear of———at the pariſh of———aforeſaid, in the county aforeſaid, had in his cuſtody and poſſeſſion one hare, he the ſaid* A. O. *being no way qualified by the laws of this realm to have the ſaid hare in his cuſtody or poſſeſſion, againſt the form of the ſtatute in that caſe made, by reaſon whereof, he the ſaid* A. O. *hath forfeited the ſum of* 5 *l. Theſe are therefore to require you to levy the ſaid ſum of* 5 *l. by diſtreſs of the goods of him the ſaid* A. O. *and if within the ſpace of* [*five*] *days next after ſuch diſtreſs by you taken, the ſaid ſum of* 5 *l. together with reaſonable charges of taking and keeping the ſaid diſtreſs, ſhall not be paid, that then you do ſell the ſaid goods ſo by you diſtrained as aforeſaid, and out of the money ariſing by ſuch ſale, that you do pay one half of the ſaid ſum of* 5 *l. to* A. I. *of———yeoman, who informed me of the ſaid offence, and the other half to the poor of the pariſh of the———aforeſaid, within which pariſh the ſaid offence was committed; returning to him the ſaid* A. O. *the overplus on demand, the reaſonable charges of taking, keeping, and ſelling the ſaid diſtreſs, being firſt deducted. And if ſufficient diſtreſs cannot be had of the goods of the ſaid* A. O. *that you certify the ſame to me together with the return of this precept. Given under my hand and ſeal the———day of———in the——— year of———*

L. Commitment on the ſame for want of diſtreſs; on the 5 *An. c.* 14. *ſ.* 2.

Weſtmorland. { To the conſtable of——in the ſaid county, and to the keeper of the houſe of correction at——in the ſaid county.

WHEREAS A. O. *of———in the ſaid county, higler, was on the———day of———duly convicted before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, upon the oath of* A. W. *of———a credible witneſs, for that he the ſaid* A. O. *on the———day of———in the———year of——— at the pariſh of———aforeſaid, in the county aforeſaid, had in his cuſtody and poſſeſſion one hare, he the ſaid* A. O. *being no way qualified by the laws of this realm to have the ſaid hare in his cuſtody or poſſeſſion, againſt the form of the ſtatute in that caſe made, by reaſon whereof he the ſaid* A. O. *hath forfeited the ſum of* 5 *l. And whereas on the ſaid———day of———in the year aforeſaid, I did iſſue my warrant to the conſtable of———to levy the ſaid ſum of* 5 *l. by diſtreſs and ſale of the goods of him the ſaid* A. O. *and to diſtribute the ſame according as is directed by the ſaid ſtatute: And whereas it duly appears to me, as well on the oath of the ſaid conſtable of———as otherwiſe, that he the ſaid conſtable of———hath uſed his beſt endeavours to levy the ſaid ſum on the goods of the ſaid* A. O. *as aforeſaid, but that no ſufficient diſtreſs can be found whereon to levy the ſame; Theſe are therefore to require you the conſtable of———aforeſaid, to carry the ſaid* A. O. *to the ſaid houſe of correction at———aforeſaid, and deliver him to the ſaid keeper thereof, together with this precept. And you the ſaid keeper are hereby commanded to receive into your cuſtody in the ſaid houſe of correction him the ſaid* A. O. *and him there ſafely to keep for the ſpace of three months, without bail or mainpriſe; and for your ſo doing this ſhall be your ſufficient warrant. Given under my hand and ſeal the———day of———*

M. Mitti-

M. Mittimus for carrying a gun; on the 33 *H.* 8. *c.* 6. from Mr. *Dalton.*

Weſtmorland. { To the keeper of his majeſty's gaol at ———in the county of——aforeſaid, and to his deputy or deputies there, and to every of them.

FORASMUCH *as this preſent day,* A. I. *of*——— *yeoman, and* B. I. *of*———*yeoman, did arreſt and bring before me at*———*in the ſaid connty, one* A. O. *late of*———*in the ſaid county, taylor, whom they had ſeen and found the ſame day (as they ſaid) ſhooting in a hand gun, charged with powder and hail ſhot, at a coney, in a certain place in*——*within the ſaid county, called*———*contrary to the law of the realm, and thereupon prayed that juſtice might be done in that behalf: I* John Moore, *eſquire, being the next juſtice of the peace in the ſaid county to the place aforeſaid, did then at*——*aforeſaid, upon the ſaid requeſt, take the examination of the ſaid* A. O. *and did alſo then and there hear the proofs of them the ſaid* A. I. *and* B. I. *touching the ſaid offence; And for that it did then manifeſtly appear unto me as well by the teſtimonies of them the ſaid* A. I. *and* B. I. *as alſo by the plain confeſſion of him the ſaid* A. O. *that he the ſaid* A. O. *had not then lands, tenements, fees, annuities or offices, to the yearly value of an hundred pounds, and that he had ſhot in the ſaid hand gun in the manner and form as is aforeſaid: I do ſend you herewithal the body of him the ſaid* A. O. *as lawfully convicted of the ſaid offence before me, requiring you in his majeſty's name, to receive him into your ſaid gaol, and him there ſafely to keep, until he ſhall have truly paid the pain and forfeiture of* 10 *l. of lawful money of* Great Britain, *laid upon him for his ſaid offence the ſtatute made in the three and thirtieth year of the reign of king* Henry *the eighth; that is to ſay, the one moiety thereof to our ſovereign lord the king, and the other moiety to them the ſaid* A. I. *and* B. I. *the firſt bringers of him before me. And this ſhall be your ſufficient warrant in this behalf. Hereof fail you not, as you will anſwer for your contempt at your peril. Given under my hand and ſeal at*——*aforeſaid, in the county aforeſaid, the*——*day of*——*in the*———*year of the reign of*——

N. Record of the conviction for carrying a gun; on the 33 *H.* 8. *c.* 6. from Mr. *Dalton.*

Weſtmorland. BE *it remembred, that on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— A. I. *of* ——— *yeoman, and* B. I. *of* ——— *yeoman, one* A. O. *late of* ——— *in the county aforeſaid, taylor, found and ſaw, at* ——— *in the county aforeſaid, the day and year aforeſaid, with a hand gun charged with gun-powder and leaden hail ſhot, ſhooting and diſcharging the ſaid gun, at a certain coney then being in a certain place there, called* ——— *againſt the form of the ſtatute in that caſe made and provided; and therefore the day and year aforeſaid, him the ſaid* A. O. *at* ——— *aforeſaid, they did arreſt, and at* ——— *aforeſaid before me* ——— *eſquire, one (and next unto the ſaid place called* ———) *of the juſtices of our ſaid lord the king, aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers treſpaſſes and other miſdemeanors in the ſame county committed, then with them did bring, requeſting thereupon juſtice to be done; which requeſt being heard, I the ſaid* J. P. *at* ——— *aforeſaid, the day and year aforeſaid, duly thereupon have examined the aforeſaid* A. O. *at* ——— *aforeſaid, and the proofs of the aforeſaid* A. I. *and* B. I. *in this behalf have taken: And becauſe that as well by the proofs aforeſaid, as by the confeſſion of him the ſaid* A. O. *at* ——— *aforeſaid, then and there it hath appeared at me manifeſtly, that the aforeſaid* A. O. *at* ——— *aforeſaid, when he had not in his own right, nor in the right of his wife, to his own uſe, nor any other to the uſe of the ſaid* A. O. *had lands, tenements, fees, annuities or offices to the yearly value of one hundred pounds, in the hand gun aforeſaid, in manner and form aforeſaid, did ſhoot, againſt the form of the ſtatute aforeſaid; I the ſaid* J. P. *the aforenamed* A. O. *at* ——— *aforeſaid, the day and year aforeſaid, to the next gaol of our ſaid lord the king, at* ——— *in the county aforeſaid (of the treſpaſs aforeſaid before me convicted) have committed, there to remain until the penalty and forfeiture of* 10 *l. of lawful money of* Great Britain, *he ſhall truly pay or cauſe to be paid, to wit, one moiety thereof to our ſaid lord the king, and the other moiety thereof to the ſaid* A. I. *and* B. I. *the firſt bringers of the ſaid* A. O. *before me as is aforeſaid. In witneſs of all which I the aforeſaid* J. P. *to theſe preſents have put my ſeal.*

Given

Given at ——— *aforeſaid, the day and year firſt above written.*

O. Conviction for killing deer, from *Tremaine's Entries*, 328, 329. which conviction was on the 13 *C.* 2. *c.* 10. but is here altered to grounds incloſed, to bring the offence within the 3 *W.* *c.* 10. which is done by the addition only of that ſingle word [*incloſed*] with the alteration of the penalty.

Cumberland. BE *it remembred that on the third day of* September *in the year of the reign of our lord* Charles *the ſecond now king of*, &c. *the* thirty-ſecond, *one* Benjamin Granger *of* ——— *gentleman, cometh before me* John Aglionby, *eſquire, one of the juſtices of our ſaid lord the king, aſſigned to keep the peace of our ſaid lord the king in the ſaid county of* C. *at* G. *in the ſame county, and giveth me to underſtand and be informed, that one* James Dobſon, *late of* ——— J. B. *late of* ——— *and* L. M. *late of* ———. *on the 25th day of* Auguſt *in the year of the reign of our ſaid lord the now king, the* 32d *aforeſaid, in a certain park then of the moſt noble* Henry *duke of* Norfolk, *called* Grayſtock *park, in the pariſh of* Graoſtock, *in the ſaid county, then and long before and yet being ground incloſed, wherein deer then were and long before had been uſually kept, unlawfully hunted, and a certain fallow deer of the ſaid duke then in the ſame park killed, took, and carried away, without the conſent of the ſaid duke then owner of the ſaid park, or of* Andrew Huddleſton, *eſquire, then being chiefly intruſted with the cuſtody of the ſame park, againſt the form of the ſtatute in ſuch caſe made and provided: And afterwards, to wit, on the aforeſaid* third *day of* September *in the* 32d *year aforeſaid, two credible witneſſes that is to ſay,* J. H. *of* ——*and* T. B. *of* ——*came before me the ſaid juſtice aſſigned*, &c. *at* G. *aforeſaid, and before me the ſaid juſtice aſſigned*, &c. *upon their oath on the holy goſpel of god to them then and there by me the aforeſaid juſtice aſſigned*, &c. *by the authority of the ſtatute aforeſaid adminiſtred and given, do depoſe, ſwear, and ſay, that each of them doth depoſe, ſwear, and ſay, upon their oath aforeſaid, that the aforeſaid* J. D. J. B. *and* L. M. *on the aforeſaid 25th day of* Auguſt *in the* 32d *year aforeſaid, in the aforeſaid park and ground incloſed, of the aforeſaid duke of* Norfolk, *in the pariſh of* Grayſtock *aforeſaid, unlawfully hunted, and the aforeſaid fallow deer of him the ſaid duke, then in the ſaid park and ground incloſed,*

took, killed, and carried away, without the conſent of the ſame duke then owner of the ſaid park and ground incloſed, or of the aforeſaid A. H. *eſquire, then with the cuſtody of the ſame park and ground incloſed as is aforeſaid chiefly entruſted. And thereupon they the aforeſaid* J. D. J. B. *and* L. M. *on the ſaid* 3d *day of* September *in the* 32d *year aforeſaid, before me the ſaid juſtice aſſigned,* &c. *by the oath of two credible witneſſes aforeſaid, according to the form of the ſtatute aforeſaid, are, and every of them is convicted. And for the offence aforeſaid, every of them the aforeſaid* J. D. J. B. *and* L. M. *according to the form of the ſtatute aforeſaid, hath ſeverally forfeited the ſum of* 30*l. one third part thereof to the aforeſaid* B. G. *the informer in this behalf as is aforeſaid, another third part thereof to the uſe of the poor of the ſaid pariſh of* G. *within which pariſh the offence aforeſaid was committed, and the other third part thereof to the duke aforeſaid, owner of the deer aforeſaid. In witneſs whereof I the aforeſaid juſtice to this preſent record of the conviction as aforeſaid, have ſet my hand and ſeal, at* G. *aforeſaid, on the day and year firſt abovementioned.*

John Aglionby.

P. Warrant of diſtreſs for hunting and killing deer; on the 3 *W.* *c.* 10. *ſ.* 2.

Weſtmorland. { To ——

WHEREAS A. O. *of* ——— *yeoman, is this day duly convicted before me* J. P. *eſquire, one of his majeſty's juſtices aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers treſpaſſes and other miſdemeanors in the ſaid county committed, by the oath of* A. W. *of* —— *yeoman, a credible witneſs, for that he the ſaid* A. O. *on the* ——— *day of* —— *in the* —— *year of* —— *in a certain park, then of Sir* P. M. *baronet, in the pariſh of* ——— *in the ſaid county, then and long before and yet being ground incloſed, wherein deer then were and long before had been uſually kept, unlawfully did hunt, and a certain fallow deer of the ſaid Sir* P. M. *baronet, then in the ſame park did kill, take, and carry away, without the conſent of the ſaid Sir* P. M. *baronet, then owner of the ſaid park, or of any other perſon then chiefly intruſted with the cuſtody of the ſame park, againſt the form of the ſtatute in ſuch caſe made and provided; by reaſon whereof he the ſaid* A. O. *hath forfeited the ſum of* 30*l. of lawful money of* Great Britain *to be diſtributed as herein after is mentioned.*

These

These are therefore in his said majesty's name to command you to levy the said sum by distress of the goods and chattels of him the said A. O. *And if within the space of* [*six*] *days next after such distress by you taken, the said sum of* 30 *l. together with reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained as aforesaid; and out of the money arising by such sale, that you do pay one third part of the said sum of* 30 *l. to* A. I. *of* ——— *in the said county, yeoman, who informed me of the said offence; and one third part unto the churchwardens or overseers of the poor of the said parish of* ———*for the use of the poor of the said parish, and the other third part to the said* ———*owner of the said deer; returning to him the said* A. O. *the overplus upon demand, the reasonable charges of taking, keeping, and selling the said distress being first deducted. And if sufficient distress cannot be had or found, by and on which the said sum of* 30 *l. may be levied, you are hereby required to certify the same to me, within two days after the date of this present warrant. Given under my hand and seal, at* ———*in the county aforesaid, the* ———*day of* ———*in the* ———*year of the reign of* ———.

Q. Commitment for want of distress, for hunting and killing deer; on the 3 *W. c.* 10. *s.* 2.

Westmorland. { To the constable of ——— in the said county, and to the keeper of the common gaol at ——— in the said county, and to the chief officer of the market town of ——— in the said county, and to every of them.

WHEREAS A. O. *of* ———*labourer, was on the* ———*day of* ——— *duly convicted before me* J. P. *esquire, one of his majesty's justices assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, by the oath of* A. W. *of* ——*yeoman, a credible witness, for that he the said* A. O. *on the* ——— *day of* ——— *in the* ——— *year* ——— *in a certain park then of* ——— *esquire, in the parish of* ——— *in the said county, then and long before and yet being ground inclosed wherein deer then were and long before had been usually kept, unlawfully did hunt, and a certain fallow deer of the said* ———*esquire, then in the same park did kill, take, and carry away, without the consent*

ſent of the ſaid———then owner of the ſaid park, or of any other perſon then chiefly entruſted with the cuſtody of the ſame park, againſt the form of the ſtatute in ſuch caſe made and provided; by reaſon whereof he the ſaid A. O. *hath forfeited the ſum of* 30 *l. And whereas on the ſaid—— day of—— in the year aforeſaid, I did iſſue my warrant to the conſtable of——— to levy the ſaid ſum of* 30 *l. by diſtreſs of the goods and chattels of him the ſaid* A. O. *and to pay over the ſaid ſum of* 30 *l. according as is directed by the ſtatute aforeſaid; And whereas it duly appears to me, as well on the oath of the ſaid conſtable of——— as otherwiſe, that he the ſaid conſtable of———hath uſed his beſt endeavours to levy the ſaid ſum of* 30 *l. on the goods and chattels of the ſaid* A. O. *as aforeſaid, and that no ſufficient diſtreſs can be found whereon to levy the ſame: Therefore in purſuance of the ſtatute aforeſaid, I do hereby command you the ſaid conſtable of———him the ſaid* A. O. *to apprehend and ſafely to convey to the ſaid common gaol at———aforeſaid, in the county aforeſaid, and him to deliver to the keeper thereof aforeſaid, together with this precept: And I do hereby command you the ſaid keeper of the gaol aforeſaid, to receive into your cuſtody in the ſaid gaol him the ſaid* A. O. *and him there ſafely to keep for the ſpace of one whole year; ſaving that within the ſaid year you deliver him the ſaid* A. O. *to the chief officer of——— being the next market town next adjoining to the place where the ſaid offence was committed, or to his under officer or officers, together with this precept, who are hereby reſpectively required to ſet the ſaid* A. O. *in the pillory in the ſaid market town by the ſpace of one hour on ſome market day. And hereof fail not, as you will reſpectively anſwer the ſame at your perils. Given under my hand and ſeal, at———in the ſaid county, the——— day of——— in the year———.*

R. Warrant to ſearch for veniſon or ſkins; on the 3 *W. c.* 10. *ſ.* 3.

Weſtmorlad. { To the conſtable of——

WHEREAS A. I. *of——— in the ſaid county, yeoman, hath this day made oath before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, that divers fallow deer have of late been unlawfully killed in, and taken and carried away from the park and ground incloſed of——— at——— in the ſaid county, and that he the ſaid* A. I. *hath juſt cauſe to ſuſpect, and doth ſuſpect, that veniſon*

veniſon or the ſkins of deer, or toyls whereby to take and kill deer are concealed in the houſes, outhouſes, or other places belonging to the ſaid houſes of A. O. *of*——*yeoman, and* B. O. *of*———*yeoman, at*———*aforeſaid in the county aforeſaid: Theſe are therefore in his ſaid majeſty's name, and by virtue of the ſtatute in that caſe made and provided, to require you that you do forthwith upon ſight hereof, enter into and ſearch the ſaid houſes, outhouſes, and other places belonging to the ſaid houſes, of them the ſaid* A. O. *and* B. O. *at*———— *aforeſaid; and if on ſuch ſearch you ſhall there find any veniſon, or ſkin of any deer, or toyls aforeſaid, that you do apprehend the perſon or perſons, in whoſe houſes, outhouſes, or other places aforeſaid, ſuch veniſon, ſkin, or toyls ſhall be found, and him or them ſo apprehended do carry before ſome of his ſaid majeſty's juſtices of the peace in and for the ſaid county, to be examined concerning the premiſſes, and further dealt withal according to law. Given under my hand and ſeal, the*———— *day of*———*in the year*———.

Gaming.

1. MR. *Dalton* ſays, that playing at cards and dice, and the like, are not prohibited by the cammon law; neither are they *mala in ſe*, of their own nature, but only prohibited by ſtatute. *Dalt. c.* 46. Gaming not an offence at common law.

2. But it hath been ſaid, that all common gaming houſes are nuſances in the eye of the law, as being great temptations to idleneſs, and apt to draw together numbers of diſorderly perſons. 1 *Haw.* 198. Gaming houſe a nuſance.

3. By the ſtatute of the 33 *H.* 8. *c.* 9. No perſon ſhall for his gain, lucre, or living, keep any common houſe, alley, or place of bowling, coyting, cloyſh, cayls, half bowl, tennis, dicing table, or carding, or any unlawful game; on pain of 40 s. a day. *ſ.* 11. Gaming houſes prohibited by the 33 H. 8.

But it was reſolved upon this clauſe, in the third year of *J.* 1. that if the gueſts in an inn or tavern, call for a pair of dice or tables, and for their recreation play with them, or if any neighbours play at bowls for their recreation, or the like, theſe are not within the ſtatute; for altho' the games be uſed in any inn, tavern, or other houſe, yet if the houſe be not kept for gaming, lucre, or gain, but they play only for recreation, and for no gain to the owner of the houſe, this is not within the ſtatute,

ſtatute, nor is ſuch perſon that plays in ſuch houſe that is not kept for lucre or gain, within the penalty of that law. *Dalt. c.* 46.

And moreover, by the ſame ſtatute it is further enacted, that every perſon uſing and haunting any the ſaid houſes and plays, and there playing, ſhall forfeit 6 s. 8 d. 33 *H.* 8. *c.* 9. *ſ.* 12.

And all and every juſtices of the peace, mayors, ſheriffs, and other head officers, may enter all ſuch houſes and places, where ſuch games ſhall be ſuſpected to be holden; and as well the keepers of the ſame, as alſo the perſons there reſorting and playing, may take, arreſt, and impriſon, and keep in priſon, until the ſaid keepers have found ſureties to the king's uſe, to be bound by recognizance or otherwiſe, no longer to uſe, keep, or occupy any ſuch houſe, play, game, alley, or place; and alſo that the perſons there ſo found, be in like caſe bound by themſelves, or with ſureties, no more to play, haunt, or exerciſe from thenceforth, in, at, or to any of the ſaid places, or at any of the ſaid games. *id. ſ.* 14.

And the mayors, ſheriffs, bailiffs, conſtables, and other head officers within every city, borough, or town, ſhall make due ſearch weekly, or at the furtheſt once a month, in all places where any ſuch houſes or places ſhall be ſuſpected to be kept; and if they ſhall not make ſuch ſearch at the fartheſt once a month, if the caſe ſo require, every ſuch perſon offending ſhall forfeit 40 s. for each month. *id. ſ.* 15.

And by the ſame act, no manner of artificer, handicraftſman, huſbandman, apprentice, labourer, ſervant at huſbandry, journeyman, or ſervant of artificer, mariners, fiſhermen, watermen, or any ſerving man, ſhall play at the tables, tennis, dice, cards, bowls, claſh, coyting, logating, or any other unlawful game, out of *Chriſtmas*, on pain of 20 s. and in *Chriſtmas* to play at the ſaid games only in their maſter's houſes, or in their maſter's preſence; and alſo no perſon ſhall at any time play at bowls in open places out of his garden or orchard, on pain of 6 s. 8 d. *id. ſ.* 16.

But any maſter may licenſe his ſervant to play at cards, dice, or tables with himſelf, or with any other gentleman openly in his houſe, or in his preſence. *id. ſ.* 22.

And any nobleman, or other perſon having 100 l. a year, may command or licenſe his ſervants, or family of his houſe, to play within the precinct of his houſe, garden, or orchard, at cards, dice, tables, bowls, or tennis,

as well among themſelves, as others repairing to the ſame houſe. *id. ſ.* 23.

And all juſtices of the peace, mayors, bailiffs, ſheriffs, and other head officers, and every of them, *finding or knowing* any perſon uſing unlawful games, contrary to this act, may commit every ſuch offender toward, there to remain without bail or mainpriſe, till he be found by obligation to the king's uſe, in ſuch ſum as by the diſcretion of the ſaid juſtices, or other ſuch officers ſhall be thought reaſonable, that they ſhall not from thenceforth uſe ſuch unlawful games. *id. ſ.* 16.

And by the 2 *G.* 2. *c.* 28. Where it ſhall be *proved on the oath of two witneſſes* before any juſtice of the peace, as well as where he ſhall find upon his own view, that any perſon hath uſed any unlawful game contrary to the ſaid ſtatute, the ſaid juſtice ſhall have power to commit him to priſon without bail, unleſs and until he ſhall enter into recognizance, with ſureties, or without, at the diſcretion of the juſtice, that he ſhall not from thenceforth play at or uſe ſuch unlawful game. *ſ.* 9.

And where any the forfeitures abovementioned ſhall be found within the precincts of any leet, the lord ſhall have one half, and the other half ſhall be to him that ſhall ſue in any of the king's courts; and elſewhere, they ſhall be half to the king, and half to him that ſhall ſue in like manner. 33 *H.* 8. *c.* 9. *ſ.* 18.

But by the 31 *El. c.* 5. All ſuits to be purſued upon any ſtatute (that is, any ſtatute then in force) for uſing any unlawful game, ſhall be ſued and proſecuted, or otherwiſe heard and determined, in the general quarter ſeſſions or aſſizes of the county where the offence ſhall be committed, or in the leet within which it ſhall happen, and not in any wiſe out of the county. *ſ.* 7,

And no privilege of parliament ſhall be allowed to any perſon, againſt whom a proſecution ſhall be commenced, for keeping any common gaming houſe, or place for playing at any prohibited game. 18 *G.* 2. *c.* 34. *ſ.* 7.

Gaming in publick houſes prohibited by the 30 G. 2. c. 24.

4. By the 30 *G.* 2. *c.* 24. If any perſon licenſed to ſell any ſorts of liquors, or who ſhall ſell or ſuffer the ſame to be ſold in his houſe, outhouſe, ground, or apartment thereto belonging, *ſhall knowingly ſuffer* any gaming with cards, dice, draughts, ſhuffle boards, miſſiſſipi, or billiard tables, ſkittles, nine pins, or with any other implement of gaming, in his houſe, outhouſe, ground, or apartment thereto belonging, by any journeyman, labourers, ſervants, or apprentices; and ſhall be convicted thereof

thereof on confeſſion, or oath, of one witneſs, before one juſtice, within ſix days after the offence committed; he ſhall forfeit for the firſt offence 40 s. and for every other offence 10 l. by diſtreſs by warrant of ſuch juſtice; three fourths of which ſhall be to the churchwardens for the uſe of the poor, and one fourth to the informer. *ſ.* 14.

And if any journeyman, labourer, apprentice, or ſervant, *ſhall game* in any houſe, outhouſe, ground, or apartment thereto belonging, wherein any liquors ſhall be ſold; and complaint thereof ſhall be made on oath before one juſtice where the offence ſhall be committed: he ſhall iſſue his warrant to the conſtable or other peace officer of the place wherein the offence is charged to have been committed, or where the offence ſhall reſide, to apprehend and carry the offender before ſome juſtice of the place where the offence ſhall be committed, or where the offender ſhall reſide; and if ſuch perſon ſhall be convicted thereof by the oath of one witneſs or confeſſion, he ſhall forfeit not exceeding 20 s. nor leſs than 5 s. as the juſtice ſhall order, every time he ſhall ſo offend and be convicted as aforeſaid, one fourth to the informer, and three fourths to the overſeers for the uſe of the poor; and if he ſhall not forthwith pay down the ſame, ſuch juſtice ſhall commit him to the houſe of correction or ſome other priſon of the place where he ſhall be apprehended, to be kept to hard labour for any time not exceeding one month, or until he ſhall pay the forfeiture. *ſ.* 15.

And any juſtice unto whom complaint upon oath ſhall be made, of any offence committed againſt this act, ſhall iſſue his warrant for bringing before him or ſome other juſtice of ſuch place, the perſon charged with ſuch offence; and the juſtice before whom he is brought ſhall hear and determine the matter, and proceed to judgment and conviction; and if it ſhall appear upon oath to the ſatisfaction of ſuch juſtice, that any perſon within his juriſdiction can give material evidence on behalf of the proſecutor or of the perſon accuſed, and who will not voluntrily appear; he ſhall iſſue his ſummons to convene him to give his evidence; and if he ſhall neglect or refuſe to appear on ſuch ſummons, and no juſt excuſe ſhall be offered, then (on proof upon oath of the ſummons having been duly ſerved upon him) he ſhall iſſue his warrant to bring ſuch witneſs before him; and on his appearance, if he ſhall refuſe to be examined on oath, without offering juſt cauſe for ſuch refuſal, the juſtice ſhall commit him to the publick priſon for any time not exceeding three months. *ſ.* 16.

And

And on all proceedings in this act, any perſon ſhall be admitted to be a witneſs, notwithſtanding his being an inhabitant of the place wherein the offence ſhall have been committed. *ſ.* 18.

And the juſtice before whom any perſon ſhall be convicted upon this act, ſhall cauſe the conviction to be drawn up in the form or the effect following;

To wit. BE *it it remembred, that on this* —— *day of* —— *in the* —— *year of his majeſty's reign* A. B. *is convicted before* —— *of his majeſty's juſtices of the peace for the ſaid county of* —— [or, *for the* —— *riding*, or *diviſion, of the ſaid county of* —— or, *for the city, liberty, or town of* —— as the caſe ſhall be] *for* —— *and* —— *the ſaid* —— *do adjudge him*, or her, *to pay and forfeit for the ſame, the ſum of* —— *Given under* —— *the day and year aforeſaid.*

The ſame to be written upon parchment, and tranſmitted to the next ſeſſions, to be filed amongſt the records; and if any perſon ſhall appeal to the ſaid ſeſſions, the juſtices there ſhall, upon receiving the ſaid conviction, proceed to hear and determine the matter. *ſ.* 19.

And no certiorari ſhall be granted, to remove any proceedings on this act. *ſ.* 20.

And if any perſon convicted of any offence puniſhable by this act, ſhall think himſelf aggrieved by the judgment of the juſtice before whom he ſhall have been convicted, he may appeal to the next ſeſſions, and the execution of the judgment ſhall in ſuch caſe be ſuſpended, the perſon convicted entring into recognizance at the time of the conviction, with two ſureties in double the ſum he ſhall have been adjudged to pay, upon condition to proſecute ſuch appeal with effect, and to be forthcoming to abide the judgment and determination of the ſaid ſeſſions: and the ſeſſions ſhall award ſuch coſts as ſhall appear juſt and reaſonable to be paid by either party; and if the judgment ſhall be affirmed, the appellant ſhall immediately pay the ſum adjudged to be forfeited together with ſuch coſts as the court ſhall award, or in default thereof ſhall ſuffer the pains and penalties by this act inflicted upon perſons reſpectively who ſhall neglect to pay or ſhall not pay the forfeitures by this act to be paid. *ſ.* 21.

And no perſon puniſhed by this act, ſhall be puniſhed by any other law. *ſ.* 22.

5. By the 25 *G.* 2. *c.* 36. any houſe, room, garden, or other place kept for publick dancing, muſick, or other entertainment Gaming houſe within London and 20 miles thereof.

entertainment of the like kind, in *London*, or within 20 miles thereof, without licence as hereafter following (except the theatres of *Drury-lane*, *Covent Garden*, the *Hay-market*, and other entertainments exerciſed by letters patents or licence of the crown, or of the lord chamberlain) ſhall be deemed a diſorderly houſe or place, and the keeper thereof ſhall forfeit 100 l. with full coſts to him who ſhall ſue (in ſix months) in any of the courts at *Weſtminſter*. And the perſon who ſhall appear to act as maſter, or as having the management of ſuch diſorderly houſe, ſhall be deemed a keeper thereof.

Which ſaid licence ſhall be granted at the laſt preceding *Michaelmas* ſeſſions, and ſhall be ſigned and ſealed by four juſtices in open court, and afterwards be publickly read by the clerk of the peace, with the names of the juſtices ſubſcribing the ſame; and no licence ſhall be granted at any adjourned ſeſſions; nor ſhall any fee be taken for the ſame. And there ſhall be inſerted in ſuch licence, and made conditions thereof, that the words following ſhall be affixed in large capital letters over the door or entrance of every ſuch licenſed houſe or place, *viz. Licenſed purſuant to act of parliament of the twenty-fifth of king* George *the ſecond*; and that it ſhall not be opened before five in the afternoon. And in caſe of a breach of either of the ſaid conditions, the licence ſhall be forfeited, and revoked by the juſtices at the next ſeſſions, and ſhall not be renewed.

And to incourage proſecutions againſt perſons keeping bawdy houſes, gaming houſes, or other diſorderly houſes, the conſtable on notice given him in writing by any two inhabitants of the pariſh, paying ſcot and lot, of any perſon keeping ſuch houſe, ſhall forthwith go with them to a juſtice of the peace; and ſhall (on their making oath that they believe the contents of ſuch notice to be true, and entring into a recognizance of 20 l. each to produce evidence of the offence,) enter into a recognizance of 30 l. to proſecute with effect ſuch perſon at the next ſeſſions or aſſizes, as to the juſtice ſhall ſeem meet: and on the conſtable entring into ſuch recognizance, the juſtice ſhall iſſue his warrant for bringing the accuſed perſons before him, and ſhall bind them over to appear at the ſaid ſeſſions or aſſizes, and ſhall alſo, if he thinks fit, demand and take ſurety for their good behaviour in the mean time.

And if the conſtable ſhall neglect or refuſe, upon ſuch notice, to go before a juſtice, or to enter into recognizance, or ſhall be wilfully negligent in carrying on the proſecution, he ſhall forfeit 20 l. to each of the ſaid inhabitants.

And

And on trial, any perſon may give evidence againſt the defendant, notwithſtanding his being a pariſhioner, or having entered into ſuch recognizance.

And the conſtable ſhall be allowed all the reaſonable expences of the proſecution, to be aſcertained by two juſtices; and ſhall be paid the ſame by the overſeers of the poor: and if ſuch perſon be convicted, the overſeers ſhall alſo forthwith pay 10 l. to each of ſuch inhabitants, on pain of forfeiting double to the ſaid perſons.

And no indictment of ſuch offence ſhall be removed by certiorari.

Loſing or winning 10 l. or upwards at a time, or 20 l. in 24 hours.

6. By the 9 *An.* *c.* 14. Any perſon who ſhall at any time of ſitting, by playing at cards, dice, tables, or other game whatſoever, or by betting on the ſides of ſuch as do play, *loſe* to any one or more perſons ſo playing or betting, in the whole the ſum or value of 10 l. and ſhall pay or deliver the ſame, or any part thereof; the perſon ſo loſing and paying or delivering the ſame, ſhall be at liberty in three months to ſue for and recover the ſame with coſts, in any court of record: and if he ſhall not ſue in three months, it ſhall be lawful for any perſon to ſue for and recover the ſame and treble value, with coſts; half to ſuch perſon who ſhall ſue, and half to the poor. *ſ.* 2.

And every perſon who ſhall ſo be liable to be ſued for the ſame, ſhall be obliged and compellable to anſwer on oath ſuch bill as ſhall be preferred againſt him, for diſcovering the ſum of money or other thing ſo won. 9 *An.* *c.* 14. *ſ.* 3. 18 *G.* 2. *c.* 34. *ſ.* 3.

Or other game whatſoever] *M.* 15 *G.* 2. *Goodburn* and *Marley.* It was determined, that *horſe races* are within theſe general words. *Str.* 1159.

And by the ſame ſtatute of the 9 *An.* *c.* 14. If any perſon ſhall, at any one time or ſitting, *win* of any one or more perſon or perſons, above the ſum or value of 10 l.; he ſhall upon conviction on indictment or information, forfeit five times the value of the ſum of money or other things ſo won, to be recovered by ſuch perſon as ſhall ſue for the ſame. *ſ.* 5.

And by the 18 *G.* 2. *c.* 34. If any perſon ſhall *win* or *loſe* at play, or by betting, at any one time, the ſum or value of 10 l. or within the ſpace of 24 hours the ſum or value of 20 l.; he ſhall be liable to be indicted for ſuch offence, in ſix months, either in the king's bench or at the aſſizes; and being convicted, ſhall be fined five times the value of the ſum won or loſt, which (after ſuch charges

as the court ſhall judge reaſonable, allowed thereout to the proſecutor and evidence) ſhall go the poor. *ſ.* 8.

And if any offender ſhall diſcover another offender, ſo that he be convicted, the diſcoverer ſhall be diſcharged from all penalties by reaſon of ſuch offence, if not before convicted thereof, and ſhall be admitted as an evidence to prove the ſame. *ſ.* 9.

But nothing in this act ſhall repeal the aforeſaid act of 9 *An.* id. ſ. 10.

Loſing above 100 l. at a time.

7. If any perſon ſhall play at cards, dice, tables, tennis, bowls, kittles, ſhovelboard, or any other paſtime or game whatſoever (other than for ready money) or bett on the ſides of ſuch as ſhall play, and ſhall loſe any ſum or other thing, exceeding 100 l. at any one time or meeting, upon ticket, or credit, or otherwiſe, and ſhall not pay down the ſame at the time when he ſhall loſe the ſame; in ſuch caſe he ſhall not be bound to make it good, but the contract for the ſame, and for every part thereof, and all aſſurances and ſecurities for the ſame ſhall be void; and the winner ſhall forfeit treble value of all ſuch ſums as he ſhall ſo win above 100 l. half to the king, and half to him that ſhall ſue in one year in any of the courts of record at *Weſtminſter*, with treble coſts. 16 *C.* 2. *c.* 7. *ſ.* 3.

In the caſe of *Humphries* and *Rigby*, *M.* 1698. A bill was brought, to be relieved againſt a bond for money won at all fours. The plaintiff was a diſtiller, and the defendant a tapſter at a bowling green. And it appearing that the defendant laid the cards, and turned up the knave of clubs, which was Jack, ſeveral times together; and being an unreaſonable ſum for ſuch perſons to venture; the plaintiff was relieved, and the bond ordered to be delivered up, altho' this caſe was not within the ſtatute, the bond being for leſs than 100 l. For equity always relieved before the ſtatute, where any fraud appeared. 2 *Abr. Eq. Caſ.* 184.

Securities to be void.

8. And all notes, bills, bonds, judgments, mortgages, or other ſecurities, where the whole or any part of the conſideration ſhall be for money or any other valuable thing, won by playing at cards, dice, tables, tennis, bowls, or other game whatſoever; or by betting on the ſides of ſuch as do game; or for the reimburſing or repaying any money knowingly lent or advanced, at the time and place of ſuch play, to any perſon ſo gaming or betting, or that ſhall (during ſuch play) ſo play or bett,—ſhall be void: And where ſuch ſecurities ſhall be of lands, or ſuch as incumber

incumber or affect the ſame; they ſhall enure and be to the ſole uſe and benefit of, and devolve upon ſuch perſons as might have ſuch lands, in caſe the ſaid grantor, or perſon ſo incumbring the ſame, had been dead; And all conveyances to hinder them from devolving on ſuch perſon, ſhall be void. 9 *An. c.* 14. *ſ.* 1.

Securities] *H.* 19 *G.* 2. *Barjeau* and *Walmſley*. The plaintiff and defendant gamed together, at toſſing up for five guineas at a time. And the plaintiff having won all the defendant's ready money lent him ten guineas at a time, and won it, till the defendant had borrowed 120 guineas. In an action for money lent, it was inſiſted for the defendant, that by the 9 *An. c.* 14. the plaintiff could maintain no action; for by that act, all *ſecurities* for money lent to game with ſhall be void; and the borrowing on an agreement to pay, is *a ſecurity*. But *Lee* Ch. J. held that this was not a caſe within the act, for there is not the word *contract*, as in the ſtatute of uſury; and the word *ſecurities*, as it ſtands in this act, muſt mean laſting liens upon the eſtate. The parliament might think there would be no great harm in a parol contract, where the credit was not like to run very high; and therefore confined the act to written ſecurities. Wherefore the plaintiff obtained a verdict for 126 l. *Str.* 1249.

In the caſe of *Rawdon* and *Shadwell*, *Apr.* 23. 1755. A bill was brought by the plaintiff for an injunction, and that the defendant might deliver up the plaintiff's bond for 1150 l. for money loſt at play, and might refund a ſum of 150 l. paid by the plaintiff in part of the ſaid bond. It appeared, that the plaintiff was a lieutenant, and the defendant a captain in Cotterel's regiment; and about 14 years ago, being quartered at Leeds in Yorkſhire, the defendant won of the plaintiff in one evening the ſum of 1150 l. The plaintiff was under age; and being ſo, gave a bond for the money to the defendant; and afterwards, when of age, paid 150 l. in part. It was inſiſted for the plaintiff, that the ſecurities by the ſtatute of the 16 *C.* 2. were totally void, and ought to be delivered up; that the property of an infant in money loſt at play, is not altered, and therefore trover would lie; and the ſtatute of the 9 *An.* was mentioned, and a caſe in 2 *Mod.* 91. For the defendant, it was urged, that the plaintiff on the ſame evening won of another in the ſame company, to wit, the ſurgeon of the regiment, a larger ſum than the 1150. which has been paid by him. That fair gaming is not *malum in ſe*. It is only prohibited *ſub modo*. That the

caſe cited was of money loſt with falſe dice, which the court takes cognizance of as a cheat. That the ſtatute of *An.* gives the court juriſdiction only as to a diſcovery. That as to the 150 l. it was paid after he came of age; and if the court ſhould order the defendant to refund at the diſtance of 14 years, it would occaſion an infinite number of applications. That the ſtatute of 16 *C.* 2. gives no remedy to recover money already paid. That there has been too long an acquieſcence. That money paid, even in caſes of bribery and corruption, cannot be recovered at law. That the ſtatute of *An.* has directed an action within three months, for money loſt and paid at play.—The lord chancellor ſaid, the decree he ſhould make was not founded on any imputation on the character of the defendant, who had put in a very candid anſwer. But this is a breach of the law, from a falſe principle of honour. And he was of opinion, that the plaintiff was intitled to the whole relief prayed; that a party may come into this court to have a void ſecurity delivered up; that refunding the money is of courſe, as the ſtatute has made the ſecurity void to all intents and purpoſes.

Perſons ſuſpected of ſupporting themſelves by gaming.

9. And any two juſtices may cauſe to come, or to be brought before them, every perſon whom they ſhall have juſt cauſe to ſuſpect to have no viſible eſtate, profeſſion, or calling, to maintain themſelves by, but do for the moſt part ſupport themſelves by gaming; and if ſuch perſon ſhall not make it appear to the ſaid juſtices, that the principal part of his expences is not maintained by gaming, they ſhall require of him ſufficient ſecurities for his good behaviour for 12 months, and in default of his finding ſuch ſecurities, ſhall commit him to the common gaol, until he ſhall find ſuch ſecurities as aforeſaid. 9 *An. c.* 14. *ſ.* 6.

And if he ſhall, during the time for which he ſhall be bound, at any one time or ſitting, play or bet for any ſums or other thing exceeding in the whole the value of 20 s. ſuch playing ſhall be deemed a forfeiture of the recognizance. *ſ.* 7.

Cheating.

10. If any perſon ſhall by any fraud, unlawful device, or other ill practice in playing at cards, dice, tables, tennis, bowls, kittels, ſhovelboard; or by cockfightings, horſe races, dog matches, foot races, or other paſtimes or games; or by bearing a ſhare in the ſtakes; or by betting, on the ſides of ſuch as ſhall play, act, ride, or run as aforeſaid,——win any ſum or other valuable thing; he ſhall

ſhall forfeit treble the value, half to the king and half to the party grieved (if he ſhall ſue in ſix months), otherwiſe to any perſon who ſhall ſue in one year next after the ſaid ſix months, in any of the courts of record at *Weſtminſter*, with treble coſts. 16 *C.* 2. *c.* 7. *ſ.* 2.

And by the 9 *An. c.* 14. If any perſon ſhall by any fraud or ſhift, couſenage, circumvention, deceit, or unlawful device, or ill practice whatſoever, in playing at cards, dice, tables, tennis, bowls, or any the games aforeſaid, or bearing a ſhare in the ſtakes, or betting on the ſides of ſuch as do play, win any ſum of money or other valuable thing, and ſhall be convicted thereof upon indictment or information; he ſhall forfeit five times the value of ſuch money or other thing ſo won, and ſhall be deemed infamous and ſuffer ſuch corporal puniſhment as in caſes of wilful perjury; and ſuch penalty to be recovered by ſuch perſon as ſhall ſue for the ſame, by ſuch action as aforeſaid. *ſ.* 5.

T. 9 *G.* 2. *K.* and *Luckup.* The defendant was convicted on information upon this act, which ſays, that he ſhall forfeit five times the value, to be recovered by a common informer, upon conviction. And it was moved, that a fine ſhould be ſet upon the defendant, if he refuſed to ſpeak with the proſecutor. But by the court, All the judgment that we can give is, *that he is convicted*; and a new action muſt be brought upon that judgment for the forfeiture, which was thought ſufficient to deter the offenders. In the caſe of recuſancy, there is no other judgment. And the defendant was diſcharged, without any fine or coſts. *Str.* 1048.

Quarrelling.

11. And for the preventing ſuch quarrels as may happen on the account of gaming; if any perſon ſhall aſſault and beat, or challenge to fight, any other perſon whatſoever, on account of any money won by gaming, playing, or betting, at any the games aforeſaid, he ſhall on conviction thereof by indictment or information, forfeit to the king all his goods and chattels and perſonal eſtate whatſoever, and ſhall alſo ſuffer impriſonment without bail or mainpriſe, in the common gaol of the county where the conviction ſhall be had, during the term of two years. 9 *An. c.* 14. *ſ.* 8.

Royal palaces excepted.

12. It is generally provided by the ſeveral ſtatutes, that nothing therein ſhall hinder any perſon from playing at any the games aforeſaid, within any of the king's royal palaces, where he ſhall then reſide.

Lottery, a nuſance.

13. By the 10 & 11 *W.* *c.* 17. All lotteries are declared to be publick nuſances; and all grants, patents, and licences, for ſuch lotteries, to be againſt law. *ſ.* 1.

Keeping or playing at a lottery.

14. No perſon ſhall expoſe to be played, drawn, or thrown at, or ſhall play, draw, or throw at any lottery, either by dice, lots, cards, balls, or any other numbers or figures, or any other way whatſoever; and every perſon who ſhall expoſe to be played, drawn, or thrown at, any ſuch lottery, play, or device, ſhall forfeit 500 l. one third to the king, one third to the poor, and one third with double coſts to him that ſhall ſue in the courts at *Weſtminſter*; and the offenders ſhall likewiſe be proſecuted as common rogues, according to the ſtatutes in that caſe made and provided. 10 & 11 *W.* *c.* 17. *ſ.* 2.

And every perſon who ſhall play, throw, or draw at any ſuch lottery, play, or device, ſhall forfeit 20 l. in like manner. *ſ.* 3.

And all juſtices of the peace, mayors, conſtables, and other civil officers ſhall uſe their utmoſt endeavours to prevent the drawing of any ſuch unlawful lottery, by all lawful ways and means; and every perſon who ſhall ſet up, or by writing or printing publiſh the ſetting up any ſuch unlawful lottery, with intent to have ſuch lottery drawn, ſhall forfeit 100 l. one third to the king, one third to the poor, and one third with full coſts to him who ſhall ſue in the courts at Weſtminſter. 9 *An.* *c.* 6. *ſ.* 56.

Inſurances.

15. Every perſon who ſhall keep any office or place, for making inſurances on marriages, births, chriſtnings, or ſervice, or any other office or place, under the denominations of ſales of gloves, fans, cards, numbers, or the queen's picture, for the improvement of ſmall ſums of money, ſhall forfeit 500 l. one third to the king, one third to the poor, and one third with full coſts to him who ſhall ſue. And every printer, or other perſon, who ſhall by writing or printing publiſh the ſetting up or keeping any ſuch office or place, ſhall forfeit 100 l. in like manner. 10 *An.* *c.* 26. *ſ.* 109.

Sales of lands or goods; and chances in publick lotteries.

16. Every perſon who ſhall keep any office or place, under the denomination of ſales of houſes, lands, advowſons, preſentations to livings, plate, jewels, ſhips, goods, or other things, for the improvement of ſmall ſums of money; or ſhall ſell or expoſe to ſale the ſame or any of them, by way of lottery, or by lots, tickets, numbers, or figures; or ſhall make, print, advertiſe, or publiſh propoſals or ſchemes for advancing ſmall ſums of money by

ſeveral

ſeveral perſons, amounting in the whole to large ſums, to be divided among them by the chances of the prizes in ſome publick lottery; or ſhall deliver out tickets, to the perſons advancing ſuch ſums, to intitle them to a ſhare of the money ſo advanced, according to ſuch propoſals or ſchemes; or ſhall make, print or publiſh, any propoſal or ſcheme of the like nature, under any denomination whatſoever,——and ſhall be thereof convicted, on oath of one witneſs, by two juſtices where the offence ſhall be committed, or the offender ſhall be found, he ſhall, over and above any penalties by any former act made againſt private lotteries, forfeit 500l. one third to the king, one third to the informer, and one third to the poor, to be levied by diſtreſs and ſale by warrant of ſuch juſtices, and ſhall alſo by ſuch juſtices be committed to the county gaol without bail for one whole year, and from thence till the ſaid ſum of 500l. ſhall be paid. Provided that perſons aggrieved may appeal to the next quarter ſeſſions. And every perſon who ſhall be adventerer in, or any way contribute on the account of any ſuch ſales, lotteries, propoſals, or ſchemes, ſhall forfeit double the ſum contributed, with coſts, half to the king, and half to him that ſhall ſue in the courts at Weſtminſter. 8 *G. c.* 2. *ſ.* 36, 37.

And by the 12 *G.* 2. *c.* 28. If any perſon ſhall erect, ſet up, continue, or keep, any office or place, under the denomination of a ſale of houſes, lands, advowſons, preſentations to livings, plate, jewels, ſhips, goods, or other things by way of lottery, or by lots, tickets, numbers or figures, cards, or dice; or ſhall make, print, advertiſe, or publiſh propoſals or ſchemes for advancing ſmall ſums by ſeveral perſons, amounting in the whole to large ſums, to be divided among them by chances of the prizes in ſome publick lottery eſtabliſhed by act of parliament, or ſhall deliver out tickets to the perſons advancing ſuch ſums, to intitle them to a ſhare of the money ſo advanced, according to ſuch propoſals or ſchemes; or ſhall expoſe to ſale any houſes, lands, advowſons, preſentations to livings, plate, jewels, ſhips, or other goods, by any game, method, or device whatſoever, depending upon, or to be determined by any lot or drawing, whether it be out of a box or wheel, or by cards or dice, or by any machine, engine, or device of chance of any kind whatſoever;——he ſhall, on conviction before any juſtice of the peace (or mayor) on the oath of one witneſs, or view of ſuch juſtice, or confeſſion, forfeit 200l. by diſtreſs and ſale, by warrant of

one juſtice of the county or town where the offence ſhall be committed; which ſaid forfeiture (after deducting reaſonable charges of the proſecution) ſhall go one third to the informer, and two thirds to the poor of the pariſh (except in *Bath*, where the ſaid two thirds ſhall go to the poor of the hoſpital there.) *ſ.* 1.

And if the offender ſhall not have ſufficient goods, whereon to levy the penalties, or ſhall not immediately pay or give ſecurity for the ſame; the juſtice before whom he ſhall be convicted, may commit him to the common gaol, not exceeding ſix months. *ſ.* 8.

And if any witneſs ſhall neglect or refuſe to appear, upon ſummons, or ſhall refuſe to give evidence, or give falſe evidence; he ſhall forfeit 50l. by diſtreſs, by warrant of the perſon iſſuing ſuch ſummons; and if he have not ſufficient goods whereon to levy the 50l. he ſhall be committed to the common gaol for ſix months. 18 *G.* 2. *c.* 34. *ſ.* 4.

But if any perſon think himſelf aggrieved by the judgment of any juſtice or mayor, he may appeal to the next ſeſſions, giving reaſonable notice to the proſecutor, and entring into a recognizance before ſome juſtices of the peace where the conviction was made, with two ſureties, on condition to try ſuch appeal at ſuch next ſeſſions. And if the conviction ſhall be affirmed, the party appealing ſhall pay to the proſecutor treble coſts. 12 *G.* 2. *c.* 28. *ſ.* 5.

And no conviction ſhall be quaſhed by the ſeſſions for want of form; nor ſhall be removed by certiorari, till after determination in the ſeſſions. *id. ſ.* 6.

And if any juſtice, or mayor, ſhall neglect his duty herein; he ſhall forfeit 10l. with full coſts, half to him that ſhall ſue (in ſix months) in any court of record or at the aſſizes, and half to the poor. *id. ſ.* 9.

Moreover, every ſuch ſale of houſes, lands, advowſons, preſentations, plate, jewels, ſhips, goods, or other things, by any game, lottery, machine, engine, or other device, depending upon any chance or lot, ſhall be void; and the ſame being expoſed to ſale in manner aforeſaid, ſhall be forfeited to ſuch perſon as ſhall ſue for the ſame in any court of record, or at the aſſizes. *id. ſ.* 4.

And, finally, every perſon who ſhall be an adventurer in any of the ſaid games, lotteries, or ſales, ſhall forfeit 50l. in like manner. *id. ſ.* 3.

17. The

17. The games of ace of hearts, faro, baſſet, and hazard, ſhall be deemed games, or lotteries by cards or dice; and every perſon who ſhall ſet up, or keep theſe games, ſhall be liable to all the abovementioned penalties, for ſetting up or keeping any the games or lotteries in this act mentioned. 12 *G.* 2. *c.* 28. *ſ.* 2. Ace of hearts, faro, baſſet, and hazard.

And every perſon who ſhall play, ſet at, ſtake, or punt at any of the ſaid games, ſhall forfeit 50*l.* in like manner. *ſ.* 3.

18. Alſo the game of paſſage, and every other game with one or more die or dice, or with any other inſtrument, engine, or device in the nature of dice, having one or more figures or numbers thereon (back-gammon, and the other games played with the back-gammon tables, only excepted) ſhall be deemed games or lotteries by dice, within the ſaid act of 12 G. 2. c. 28.—13 *G.* 2. *c.* 19. *ſ.* 9. Paſſage.

19. Alſo by the 18 *G.* 2. *c.* 34. No perſon ſhall keep any houſe, room, or place for playing, or ſuffer any perſon within ſuch place, to play at roly poly, or any other game with cards or dice already prohibited by the laws of this realm; and if any perſon ſhall keep ſuch houſe, or ſuffer any perſon to play at roly poly, or other game with cards or dice prohibited by law, he ſhall be liable to the penalties and proſecution, as by the ſaid act of the 12 G. 2. c. 28. —18 *G.* 2. *c.* 34. *ſ.* 1. Roly poly.

And if any perſon ſhall play at roly poly, or any game with cards or dice prohibited by law; he ſhall be liable to the penalties and proſecution, as by the ſaid act of the 12 G. 2.—18 *G.* 2. *c.* 34. *ſ.* 2.

20. If any perſon ſhall, by colour of any grant from any foreign prince or ſtate, ſet up any lottery, or undertaking in the nature of a lottery, under any denomination whatſoever; or ſhall make, print, or publiſh any propoſal for any ſuch lottery or undertaking; or ſhall ſell or diſpoſe of any ticket in any foreign lottery; and ſhall be convicted thereof, on oath of one witneſs, before two juſtices where the offence ſhall be committed, or the offender ſhall be found, he ſhall, over and above any penalties by former acts againſt unlawful lotteries, forfeit 200*l.* one third to the king, one third to the informer, and one third to the poor, to be levied by diſtreſs by warrant of ſuch juſtices; and ſhall alſo by them be committed to the county gaol for one year, and from thence till the ſaid ſum of 200*l.* be paid: provided, that perſons aggrieved Foreign lotteries.

ved may appeal to the next quarter ſeſſions. 9 G. c. 19. ſ. 4, 5.

And by the 6 G. 2. c. 35. If any perſon ſhall ſell, procure, or deliver any ticket, receipt, chance, or number in any foreign or pretended foreign lottery, or in any claſs, part or diviſion thereof, or in any undertaking in the nature of a lottery; or ſhall ſell, procure, or deliver any ticket, receipt, chance, or number in any duplicate or pretended duplicate of any foreign or pretended foreign lottery; or ſhall receive any money for any ſuch ticket, receipt, chance, or number, or in conſideration of any money to be repaid in caſe any ticket or number in any foreign or pretended foreign lottery, or any claſs, part, or diviſion thereof, ſhall prove fortunate; and ſhall be convicted thereof in the courts at *Weſtminſter*, or on the oath of one witneſs before two juſtices where the offence ſhall be committed, or the offender ſhall be found; he ſhall forfeit 200l. one third to the king, one third to the informer, and one third to the poor; the ſame (in caſe of conviction before the juſtices) to be levied by diſtreſs by warrant of ſuch juſtices; and ſhall alſo be committed to the common gaol for a year, and from thence till the 200l. be paid; provided, that perſons aggrieved may appeal to the next quarter ſeſſions. ſ. 29, 30.

How far an offender may be a witneſs.

21. No perſon, other than the plaintiff and defendant, ſhall be incapacitated from being a witneſs, touching any offence againſt the laws for preventing exceſſive and deceitful gaming, by reaſon of having played, betted, or ſtaked at any prohibited game. 18 G. 2. c. 34. ſ. 5.

Gaol

Gaol and gaoler.

For breaking of gaol, ſee **Priſon breaking.**

I. Building and repairing of gaols.
II. Who ſhall have the keeping of gaols.
III. Gaoler ſhall receive criminals.
IV. How they ſhall be maintained.
V. Selling of ſtrong liquors in gaols.
VI. How priſoners may be ſet on work.
VII. How they ſhall be reſtrained and kept.
VIII. How they ſhall be delivered.
IX. Of gaolers permitting eſcapes.
X. Concerning debtors.
XI. Concerning the priſons of the King's bench *and* Marſhalſea.

I. Building and repairing of gaols.

THE juſtices, or the greater number of them, within the limits of their commiſſion, upon preſentment of the grand jury at the aſſizes (or ſeſſions, 12 *G.* 2. *c.* 29. *ſ.* 13.) of the inſufficiency or inconveniency of the county gaol, may contract with any perſon for the building, finiſhing, or repairing the ſame. 11 & 12 *W.* *c.* 19. *ſ.* 1, 2. The expence thereof to be paid by the treaſurer, out of the general county rate. 12 *G.* 2. *ſ.* 29.

But this ſhall not extend to gaols held by inheritance; nor to charge any perſons in any town or liberty which have common gaols for felons, and commiſſioners of aſſize or gaol delivery, for any aſſeſſment to the making the common gaol for the ſhire. 11 & 12 *W.* *c.* 19. *ſ.* 4, 5.

II. Who ſhall have the keeping of gaols.

The gaol itſelf is the king's, but the keeping thereof is incident to the office of the ſheriff, and inſeparable from it; except ſuch gaols whereof any perſons have the keeping by inheritance or ſucceſſion. 14 *Ed.* 3. *ſt.* 1. *c.* 10. 19 *H.* 7. *c.* 10. 2 *Inſt.* 589.

And

And therefore the ſheriffs ſhall put in ſuch keepers for whom they will anſwer. 14 *Ed.* 3. *ſt.* 1. *c.* 10.

But by the 3 *G. c.* 15. *ſ.* 10. None ſhall buy the office of gaoler, on pain of 500 l. half to the king, and half to him that ſhall ſue.

And a gaoler in fact, is as much puniſhable for a miſdemeanor in his office, as if he were a rightful gaoler. 2 *Haw.* 134.

III. Gaoler ſhall receive criminals.

All felons ſhall be impriſoned in the common gaol, and not elſewhere. 5 *H.* 4. *c.* 10.

And if the gaoler refuſes to receive a felon, or take any thing for receiving him, he ſhall be puniſhed for the ſame by the juſtices of gaol delivery. 4 *Ed.* 3. *c.* 10. *Dalt. c.* 170.

But vagrants and other criminals, offenders, and perſons charged with ſmall offences, may for ſuch offences, or for want of ſureties, be committed either to the common gaol, or houſe of correction, as the juſtices in their judgment ſhall think proper. 6 *G. c.* 19.

IV. How they ſhall be maintained.

Lord *Coke* ſays, the gaoler cannot refuſe the priſoner victuals, for he ought not to ſuffer him to die for want of ſuſtenance. 1 *Inſt.* 295.

But this is denied by others; and as there are ſeveral ſtatutes which provide for the maintenance of priſoners, without ſuppoſing the gaoler any way obliged to it, it ſeemeth that this opinion is not maintainable. *Bac. Abr.* Gaol, gaoler. F.

For by the 14 *El. c.* 5. and 12 *G.* 2. *c.* 29. they are to be provided for by a ſum to be paid out of the general county rate, by he high conſtables, to ſuch ſufficient perſons dwelling nigh the gaols, as ſhall be appointed by the juſtices in open ſeſſions, who ſhall be there ready to receive it.

V. Selling of ſtrong liquors in gaols.

By the 24 *G.* 2. *c.* 40. No licence ſhall be granted for retailing *ſpirituous liquors* within any gaol or priſon; and if the gaoler ſhall ſell, lend, uſe, or give away, or ſuffer the

the ſame (except by way of medicine) he ſhall forfeit 100 *l.* half to the king, and half with full coſts to him who ſhall ſue. *ſ.* 17.

And any juſtice, on information on oath, that ſpirituous liquors are kept or diſpoſed of in ſuch gaol, may enter and ſearch, or iſſue his warrant to ſearch for, and ſeize, and ſtave, and deſtroy the ſame. *ſ.* 18.

And if any perſon ſhall endeavour to bring any ſpirituous liquors into ſuch gaol, the gaoler or his ſervants may apprehend and carry him before a juſtice; and if by the oath of one witneſs or otherwiſe ſuch perſon ſhall be convicted, he ſhall be committed to priſon or to the houſe of correction, not exceeding three months, unleſs he ſhall immediately pay down ſuch fine, not exceeding 20 l. and not leſs than 10 l. as the juſtice ſhall impoſe, to be paid half to the informer, and half to the poor of ſuch gaol. *ſ.* 19.

And a copy of the three clauſes above, ſhall be hung up in each gaol, on pain of the gaoler forfeiting 40 s. to be levied by warrant of one juſtice, on conviction on the oath of one witneſs: and any juſtice may enter and demand a ſight of ſuch copy, and if not ſhewn to him, he ſhall immediately convict ſuch gaoler: one half of the ſaid penalty to be to the informer, and the other (or the whole if there be no informer) to the poor of ſuch gaol. *ſ.* 20.

And by the 29 *G.* 2. *c.* 12. No perſon ſhall retail *ale*, *beer*, or other liquors, in any priſon, without being licenſed in like manner as alehouſe-keepers.

VI. How priſoners may be ſet on work.

The juſtices in their general ſeſſions, if they find it needful, may provide a ſtock of ſuch materials as they find convenient for the ſetting poor priſoners on work, to be paid for by the treaſurer out of the general county rate; and may pay and provide fit perſons to overſee and ſet ſuch priſoners on work; and make ſuch orders for accounts concerning the premiſſes, as ſhall be thought needful, and for puniſhment of neglects and other abuſes, and for beſtowing the profits ariſing by the labour of the priſoners for their relief. Provided that the ſum to be ſo paid do not exceed the rate of 6 d. a week for any one pariſh. 19 *G.* 2. *c.* 4. *ſ.* 1. 12 *G.* 2. *c.* 29.

VII. How

VII. How they ſhall be reſtrained and kept.

The county gaol is the priſon for malefactors; but priſoners for debt, where eſcape lies againſt the ſheriff for their eſcaping, may be kept in what place the ſheriff pleaſes. L. *Raym.* 136.

By the 31 *C.* 2. *c.* 2. if any perſon ſhall be committed to any priſon, for any criminal or ſuppoſed criminal offence, he ſhall not be removed from thence, unleſs it be by *habeas corpus* or ſome other legal writ; or where he is removed from one priſon or place to another, within the ſame county, in order to his trial or diſcharge; or in caſe of ſudden fire or infection, or other neceſſity: on pain that the perſon ſigning any warrant for ſuch removal, and the perſon executing the ſame, ſhall forfeit for the firſt offence 100 l. and for the ſecond 200 l. to the party grieved. *ſ.* 9.

But on emergent occaſions, as in caſe of infectious diſeaſes, the ſheriff or gaoler, with the advice and conſent of three or more juſtices (1 *Q.*) may, if they ſhall find it needful, provide other ſafe places (with the owner's conſent) for the removal of ſick or other perſons out of the uſual gaols. 19 *C.* 2. *c.* 4. *ſ.* 2.

By the 22 & 23 *C.* 2. *c.* 20. The gaoler ſhall not put, keep, or lodge priſoners for debt and felons together in one room or chamber; but they ſhall be put, kept, and lodged ſeparate and apart from one another in diſtinct rooms; on pain of forfeiting his office, and treble damages to the party grieved. *ſ.* 13.

Nevertheleſs it ſeemeth generally in all caſes where a man is committed to priſon, eſpecially if it be for felony, or upon an execution, or but for a treſpaſs or other offence, every gaoler ought to keep ſuch priſoner in ſafe and cloſe cuſtody; ſafe, that he cannot eſcape: and cloſe, without conference with others or intelligence of things abroad. *Dalt. c.* 170.

And therefore if the gaoler ſhall licenſe his priſoner to go abroad for a time, and then to come again, or to go abroad with a keeper, tho' he come again, yet theſe are eſcapes. *Dalt. c.* 170.

And hereupon it is lawful for the gaoler to hamper a felon with irons to prevent his eſcape. 1 *H. H.* 601. *Dalt. c.* 170. and it is ſaid, that a gaoler is no way puniſhable for keeping even a debtor in irons. 2 *How.* 152.

But the learned editor of *Hale's Hiſtory* obſerves, that this liberty even in the caſe of a felon (much more in the caſe of a priſoner for debt) can only be intended, where the officer has juſt reaſon to fear an eſcape; as where the priſoner is unruly, or makes any attempt to that purpoſe; but otherwiſe, notwithſtanding the common practice of gaolers, it ſeems altogether unwarrantable, and contrary to the mildneſs and humanity of the laws of *England*, by which gaolers are forbidden to put their priſoners to any pain or torment. And lord *Coke*, 2 *Inſt.* 381. is expreſs, that by the common law it might not be done. 1 *H. H.* 601.

And if the gaoler keep the priſoner more ſtrictly than he ought of right, whereof the priſoner dieth, this is felony in the gaoler by the common law: and this is the cauſe, that if a priſoner die in gaol, the coroner ought to ſit upon him; and if the death was owing to cruel and oppreſſive uſage on the part of the gaoler or any officer of his, it will be deemed wilful murder in the perſon guilty of ſuch dureſs. 3 *Inſt.* 91. *Foſt.* 321, 322.

But if a criminal, endeavouring to break the gaol, aſſault his gaoler, he may be lawfully killed by him in the affray. 1 *Haw.* 71. 1 *H.H.* 496. For gaolers and their officers are under the ſame ſpecial protection that other miniſters of juſtice are. And therefore if in the neceſſary diſcharge of their duty they meet with reſiſtance, whether from priſoners in civil or criminal ſuits, or from others in behalf of ſuch priſoners, they are not obliged to retreat as far as they can with ſafety, but may freely and without retreating repel force with force. And if the party ſo reſiſting happeneth to be killed, this on the part of the gaoler, or his officer, or any perſon coming in aid of him will be juſtifiable homicide. On the other hand, if the gaoler or his officer, or any perſon coming in aid of him, ſhould fall in the conflict, this will amount to wilful murder in all perſons joining in ſuch reſiſtance. It is homicide committed in defiance of the juſtice of the kingdom. *Foſt.* 321.

But foraſmuch as the gaol is intended, in moſt caſes, for cuſtody and not for puniſhment; and confinement it ſelf, eſpecially in ſuch diſmal abodes as it is to be feared many of the gaols are, is ſufficiently afflictive and diſconſolate; human nature will plead for thoſe miſerable objects, that their condition be rendered as tolerable as the caſe will admit of; particularly with regard to cleanlineſs, which is the parent of health; and wholeſome air,

which

which is life itſelf. A remarkable effect of want of care in this reſpect, Sir *Michael Foſter* takes notice of, in the caſe of one Mr. *Clarke*, who was brought to his trial at the *Old Baily* ſeſſions in *April* 1750. It being a caſe of great expectation, the court and all the paſſages to it were extremely crouded. The weather alſo was hotter than is uſual at that time of the year. Many people who were in court, were ſenſibly affected with a very noiſome ſmell. And it appeared ſoon afterwards, upon an inquiry ordered by the court of aldermen, that the whole priſon of *Newgate*, and all the paſſages leading thence into the court, were in a very filthy condition, and had long been ſo. What made theſe circumſtances to be at all attended to was, that within a week or ten days at moſt after the ſeſſions, many people who were preſent at Mr. *Clarke*'s trial, were ſeized with a fever of the malignant kind, and few who were ſeized recovered. The ſymptoms were much alike in all the patients; and in leſs than ſix weeks the diſtemper intirely ceaſed. At the time this diſaſter happened, there was no ſickneſs in the gaol, more than is common in ſuch places. Which circumſtance, that diſtinguiſheth this from moſt of the caſes of the like kind which we have heard of, ſuggeſts a very proper caution, not to preſume too far upon the health of the gaol, barely becauſe the gaol fever is not among the priſoners. For without doubt, if the points of cleanlineſs and free air have been greatly neglected, the putrid *effluvia* which the priſoners bring with them in their cloaths or otherwiſe, eſpecially where too many are brought into a crouded court together, may have fatal effects on people who are accuſtomed to breathe better air; though the poor wretches, who are in ſome meaſure habituated to the fumes of a priſon, may not always be ſenſible of any great inconvenience from them. The perſons of chief note who were in the court at this time, and died of the fever, were Sir *Samuel Pennant* lord mayor for that year, Sir *Thomas Abney* one of the juſtices of the common pleas, *Clarles Clarke* eſquire one of the barons of the exchequer, and Sir *Daniel Lambert* one of the aldermen of *London*. Of leſs note, a gentleman of the bar, two or three ſtudents, one of the under ſheriffs, an officer of lord chief juſtice *Lee* who attended his lordſhip in court at that time, ſeveral of the jury on the *Middleſex* ſide, and about forty other perſons whom buſineſs or curioſity had brought thither. *Foſt.* 74.

VIII. How

VIII. How they ſhall be delivered.

By the 3 *H.* 7. *c.* 3. Thoſe that have the cuſtody of gaols, muſt certify the names of all priſoners, to the juſtices of gaol delivery, in order to their trial or diſcharge; on pain of 5l.

And if a gaoler detains a priſoner in gaol after his acquittal, unleſs it be for his fees (not for meat, drink, or lodging) this is an unlawful impriſonment. 2 *Inſt.* 53.

And a gaoler muſt not diſobey a writ of *habeas corpus*, for want of his fees; but the court will not turn the priſoner over till the gaoler be paid all his fees. 2 *Haw.* 151.

IX. Of gaolers permitting eſcapes.

If the gaoler voluntarily ſuffer a priſoner to eſcape, he ſhall be puniſhed in the ſame manner as the priſoner ought to have been who eſcaped; and if he negligently permit him to eſcape, he ſhall be puniſhed by fine and impriſonment. And the ſheriff ſhall anſwer for him. 2 *Haw.* 134, 5, 6.

But the principal gaoler is only fineable for the voluntary eſcape of a felon ſuffered by his deputy; for no one ſhall ſuffer capitally for any crime, but he who is actually guilty of it. 2 *Haw.* 135.

But for a negligent eſcape ſuffered by his bailiff, the ſheriff is as much liable to anſwer, as if he had actually ſuffered it himſelf; and the court may charge either the ſheriff or bailiff for it: and if a deputy gaoler be not ſufficient to anſwer a negligent eſcape, his principal muſt anſwer for him. 2 *Haw.* 135.

X. Concerning debtors.

1. By the 32 *G.* 2. *c.* 28. No ſheriff, bailiff, or other officer, ſhall carry any perſon by him arreſted or being in his cuſtody by virtue of any writ or other proceſs, to any tavern, alehouſe, or other publick victualling or drinking houſe, or to the private houſe of any ſuch officer or of any tenant or relation of his without his free conſent; nor charge him for any liquor, victuals, or other thing whatſoever, but what he ſhall call for of his own accord; nor cauſe or procure him to call for any ſuch, but what he ſhall call for voluntarily; nor demand, directly or indirectly, Arreſting and carrying to gaol.

directly, any other or greater fee than is by law allowed; nor take any gratuity for keeping him out of gaol; nor carry him to gaol within 24 hours from the time of the arreſt, unleſs ſuch perſon arreſted ſhall refuſe to be carried to ſome ſafe and convenient dwelling houſe of his own appointment within ſome city or market town (if there arreſted), otherwiſe within 3 miles from the place of arreſt, ſo as ſuch dwelling houſe be not the houſe of the perſon arreſted, and be within the reſpective diviſion or liberty. *ſ.* 1.

And no ſheriff, bailiff, or other officer, ſhall take more for one or more nights lodging, or for a day's diet, or other expences of any perſon under arreſt, than ſhall be allowed by order of ſeſſions: which ſeſſions ſhall make order therein, and vary the ſame from time to time as they ſhall ſee occaſion; and ſhall cauſe a copy of every ſuch order, and of every variation or alteration thereof, ſigned by the clerk of the peace, to be put and kept up in ſome conſpicuous place in the ſeſſions houſe or other proper place, that the ſame may be there ſeen and examined. *ſ.* 2.

And every ſheriff, and other perſon intruſted with the execution of proceſs, ſhall deliver a printed copy of the ſeveral clauſes in this act relating to bailiffs and other perſons to be employed under them, to every ſuch bailiff and other perſon; and ſhall alſo make it part of the condition of the bond to be given by ſuch bailiff or other perſon, that he will ſhew and deliver a copy of the ſaid clauſes to every perſon he ſhall arreſt and go with to any publick or other houſe where any liquor ſhall be ſold, and that he will permit every perſon ſo arreſted or any friend of his, to read over the ſame clauſes before any liquor, meat, or victuals ſhall be called for or brought to ſuch perſon: and if any bailiff ſhall offend in the premiſſes; he ſhall, beſides the breach of the condition of the bond, be deemed guilty of a miſdemeanor in the execution of the proceſs, and puniſhable as ſuch by virtue of this act. *ſ.* 3.

Gaoler to ſuffer the priſoner to ſend for neceſſaries.

2. And the ſheriffs and gaolers ſhall ſuffer any priſoner for debt, at his will and pleaſure to ſend for or to have brought unto him at ſeaſonable times in the day, any beer, ale, victuals, or other neceſſary food, from what place he ſhall think fit, or can have the ſame; and alſo to have and uſe ſuch bedding, linen, and other neceſſaries, as he ſhall have occaſion for and think fit, or ſhall be ſupplied with, without purloining or detaining the ſame, or requiring

requiring him to pay for the having or uſing thereof, or putting any manner of reſtraint or difficulty upon him in relation thereunto. ſ. 4.

Juſtices to eſtabliſh tables of fees, and rules and orders for the regulation of gaols.

3. The two lords chief juſtices and lord chief baron, or two of them, together with the mayor and two aldermen of London, or with three aldermen without the mayor, in reſpect of the priſons within the ſaid city; and the ſaid lords chief juſtices and chief baron, or two of them, together with three juſtices of the peace of Middleſex and Surry reſpectively, for the priſons within the ſaid counties; and elſewhere, the juſtices in ſeſſions,——ſhall eſtabliſh tables of the rates and *fees* to be taken by gaolers within their reſpective juriſdiction, and vary the ſame from time to time as they ſhall ſee occaſion. The ſame to be ſigned reſpectively by the ſaid judges, mayor, aldermen, and juſtices within London, Middleſex, and Surry; and elſewhere, to be ſigned by 3 or more juſtices in ſeſſions, and afterwards reviewed and confirmed or moderated by the judges of aſſize (or juſtices of great ſeſſions in Wales and Cheſhire) at the next aſſizes to be held after making or varying the ſame as aforeſaid; the ſame to be afterwards ſigned by the ſaid judges of aſſize and three juſtices of the peace of ſuch diviſion or place reſpectively. ſ. 5.

And proper *rules and orders*, for the better government of the reſpective gaols and priſoners therein, ſhall be made, and altered from time to time as there ſhall be occaſion, by the courts of Weſtminſter hall for the ſeveral priſons belonging to the ſaid courts: And by the ſaid lords chief juſtices and chief baron or two of them, together with the mayor of London and two aldermen, or with 3 aldermen without the mayor, for the priſons within the ſaid city: and by the ſaid lords chief juſtices and chief baron or two of them, together with 3 juſtices of the peace, for the priſons within Middleſex and Surry; and elſewhere, by three or more juſtices in ſeſſions, for the priſons within their reſpective diſtricts; the ſame to be afterwards reviewed, and altered if thought neceſſary, by the judges of aſſize at the next aſſizes after making or altering the ſame: And after every making or altering as aforeſaid, the ſame ſhall be ſigned by the ſaid ſeveral perſons authorized to make, review, or alter the ſame. ſ. 6.

And duplicates of every ſuch table of fees and of orders, which ſhall be made for the priſons belonging to the courts of Weſtminſter hall, ſhall be inrolled in ſuch court: and for any other priſons, ſhall be tranſmitted to the clerk of

the peace, to be inrolled by him, without fee; and every ſuch clerk of the peace ſhall cauſe another copy thereof to be hung up in the court where the aſſizes or quarter ſeſſions ſhall be held, there to remain and be inſpected; and ſhall cauſe another copy thereof to be tranſmitted to the gaoler; and ſuch gaoler ſhall forthwith cauſe the ſame to be hung up in ſome open place and in a conſpicuous manner in his gaol; and to be there kept up, ſo as that the priſoners may have free reſort thereto, at ſeaſonable times in the day, without paying any thing for the ſame. *id.*

And the courts of Weſtminſter hall ſhall, in every *Michaelmaſs* term, inquire whether ſuch tables of fees and ſuch rules or orders are there hung in the ſeveral priſons to them belonging, and daily complied with: and the judges of aſſize ſhall make like inquiry, and ſhall ſupply and redreſs whatever they ſhall find neglected or tranſgreſſed relating thereunto; and ſhall expreſly give in charge to the grand jury, to make inquiries thereof. *ſ.* 7, 8.

And no gaoler ſhall take, directly or indirectly, of any priſoner for debt, damages, coſts, or contempt, any other fee for his commitment, or coming into gaol, chamber rent there, releaſe or diſcharge, than ſhall be allowed in the ſaid table of fees: and every ſheriff, gaoler, or other officer, who ſhall in any wiſe offend againſt this act, ſhall for every ſuch offence (over and above ſuch other penalties or puniſhments as he ſhall be liable to by the laws now in force) forfeit to the party grieved 50l. with treble coſts. *ſ.* 12.

Charities to gaols.

4. The courts at Weſtminſter, juſtices of aſſize (and great ſeſſions), juſtices of the peace, and commiſſioners for charitable uſes, ſhall from time to time inquire concerning gifts and bequeſts to poor priſoners; who may ſend for papers and witneſſes, and examine perſons upon oath, and order and ſettle the payment thereof in ſuch eaſy and expeditious way as they ſhall think proper. *ſ.* 9.

And a table of ſuch benefactions, after every ſuch ſettling thereof, ſhall be tranſmitted to the clerk of the peace, to be regiſtred by him without fee; and another table to the gaoler, to be hung and kept up by him in ſome conſpicuous place in his gaol, where the priſoners may have eaſy reſort thereto without fee. *ſ.* 10.

Redreſs of grievances.

5. On the petition in term time of any perſon being or having been under arreſt, complaining of any exaction or abuſe by the gaoler or other officer, unto any of the courts of record at Weſtminſter from whence the proceſs iſſued;

iſſued; or, in vacation time, to any of the judges of ſuch court, or to the judges of aſſize or great ſeſſions, or judges of any other court of record from whence ſuch proceſs iſſued; they ſhall hear and determine the ſame in a ſummary way, and make ſuch order thereupon for redreſſing the abuſes, and for puniſhing the offender, and for making reparation to the party injured, as they ſhall think juſt, together with full coſts of the complaint; the ſame to be inforced by attachment, or in any other manner as other orders of the ſaid courts or judges may be inforced. *ſ.* 11.

How priſoners may be diſcharged on delivering up their effects.

6. If any perſon ſhall be charged in execution, for any ſum not exceeding 100*l.* and ſhall be minded to deliver up to his creditors who ſhall ſo charge him in execution, all his eſtate and effects towards the ſatisfaction of the debt wherewith he ſhall ſo ſtand charged; it ſhall be lawful for ſuch priſoner, before the end of the firſt term which ſhall be next after his being ſo charged in execution, to exhibit a petition to any court of law from whence the proceſs iſſued, or to the court into which he ſhall be removed by habeas corpus, or ſhall be charged in cuſtody, and ſhall remain in the priſon thereof; certifying the cauſe of his impriſonment:

And ſetting forth therein, not only a juſt and true account of all the real and perſonal eſtate which he or any perſon in truſt for him is intitled to at the time of his petitioning, and of all incumbrances and charges affecting the ſame; but alſo a juſt and true account of all the real and perſonal eſtate which he, or any perſon in truſt for him or for his uſe, was intereſted in or intitled to at the time of his impriſonment, either in poſſeſſion, remainder or expectancy, to the beſt of his belief, and ſo far as his knowledge extends; and likewiſe a juſt and true account, of all ſecurities wherein any part of his eſtate conſiſteth, and of all deeds, evidences, writings, books, bonds, notes, and papers concerning the ſame or relating thereto; and the names and places of abode of the witneſſes to all ſecurities, bonds, and notes, and where they are to be met with, ſo far as his knowledge extends:

And before ſuch petition ſhall be received by any ſuch court, he ſhall cauſe to be given or left unto or for all the creditors at whoſe ſuit he ſhall ſtand charged in execution as aforeſaid, their executors or adminiſtrators, and at their uſual places of abode (or to their attorney or agent laſt employed in the cauſe, if ſuch creditors, or their executors or adminiſtrators, cannot be met with, and not otherwiſe) 14 days at leaſt before ſuch petition ſhall be preſented and received, a notice in writing, ſigned with his name or

mark, importing, that he doth intend to petition the court from whence the proceſs iſſued upon which he ſtands charged in execution, or into the priſon to which he ſhall have been removed by habeas corpus, or ſhall ſtand charged in execution on any judgment recovered on any bill or declaration filed or delivered in any ſuch court; and alſo ſetting forth in ſuch notice, a true copy of the account or ſchedule of his eſtate which he intends to deliver into court (except the neceſſary wearing apparel and bedding of him and his family, and the tools or inſtruments of his trade or calling, not exceeding the value of 10 l. in the whole):

And an affidavit of the due ſervice of ſuch notice ſhall be delivered with the petition, and openly read in the court:

And if the court ſhall be ſatisfied with the regularity of ſuch notice, the petition ſhall be received; and the court ſhall thereupon, by order or rule of the ſaid court, cauſe the priſoner ſo petitioning to be brought up, and the ſaid creditors or their executors or adminiſtrators to be ſummoned to appear perſonally or by their attorney in the ſaid court:

And on their appearance, or if they ſhall not appear, then on affidavit of the due ſervice of the ſaid order on them, or on their attorney if they cannot be met with; ſuch court ſhall, in a ſummary way, examine into the matter of the petition, and tender to the priſoner the oath following;

I A. B. *do ſwear in the preſence of almighty God, that the account by me ſet forth in my petition preſented to this honourable court, doth contain a full and true account of the real and perſonal eſtate, debts, credits, and effects whatſoever, which I, or any in truſt for me, at the time of my firſt impriſonment in this action, or at any time ſince, had, or was in any reſpect intitled to, in poſſeſſion, reverſion, or remainder (except the wearing apparel and bedding of or for me and my family, and the tools or inſtruments of my trade or calling, not exceeding* 10 l. *in value in the whole): and alſo an account how much of my real and perſonal eſtate, debts, credits, or effects, hath ſince been diſpoſed of, releaſed or diſcharged, and how, to whom, and on what conſideration, and for what purpoſe, and how much thereof, I or any perſon or perſons in truſt for me, have, or at the time of my preſenting my ſaid petition to this honourable court, had, or which I am or was, or any perſon in truſt for me, or for my uſe, is any ways intereſted*

reſted in, or intitled to, in poſſeſſion, reverſion, remainder, or expectancy; and alſo a true account of all deeds, writings, books, papers, ſecurities, bonds, and notes, relating thereto, and where the ſame reſpectively now are, to the laſt of my knowledge and belief, and what charges are now affecting the real eſtate I am now ſeiſed of, or intitled to [if ſuch priſoner ſhall be then ſeiſed of any real eſtate] ; *and that I have not, at any time before or ſince my impriſonment, directly or indirectly, ſold, leaſed, aſſigned, mortgaged, pawned, or otherwiſe diſpoſed of, or made over in truſt for myſelf, or otherwiſe, than is mentioned in ſuch account, any part of my meſſuages, lands, tenements, eſtates, goods, ſtock, money, debts, or other real or perſonal eſtate, whereby to have or accept any benefit, advantage, or profit, to my ſelf or my family, or with any view, deſign, or intent, to deceive, injure, or defraud, any of my creditors to whom I am indebted: So help me God.*

And thereupon, the court may order the meſſuages, lands, tenements, goods, and effects contained in the account, or as much of them as ſhall be ſufficient to ſatisfy the ſaid debts and the fees due to the gaoler, to be (by a ſhort indorſement on the petition, and to be ſigned by the priſoner) aſſigned and conveyed to the ſaid creditors, their heirs, executors, adminiſtrators, and aſſigns, for the benefit of them who ſhall have ſo charged ſuch priſoner in execution (ſubject nevertheleſs to all prior incumbrances affecting the ſame) :

And the eſtate, intereſt, or property of all meſſuages, lands, goods, debts, eſtates, and effects which ſhall belong to ſuch priſoner, ſhall by ſuch aſſignment be veſted in the perſons to whom the aſſignment ſhall be made ; and they may take poſſeſſion, and ſue for the recovery thereof, in like manner as aſſignees of commiſſioners of bankrupts :

And on ſuch aſſignment and conveyance being executed by ſuch priſoner, he ſhall be diſcharged out of cuſtody by rule or order of ſuch coort ; which order being produced to, and a copy thereof left with the ſheriff or gaoler, he ſhall forthwith diſcharge him, without taking any fee, or detaining him in reſpect of chamber rent, lodging, or otherwiſe :

And the perſon to whom the eſtate ſhall be aſſigned, ſhall with all convenient ſpeed ſell and diſpoſe thereof, and divide the net produce amongſt the creditors who ſhall have charged ſuch priſoner in execution before the

time of preſenting the petition, in proportion to their reſpective debts.

But if any perſon at whoſe ſuit ſuch priſoner ſtood charged in execution, ſhall not be ſatisfied with ſuch priſoner's oath, and ſhall either perſonally, or by his attorney (if he cannot perſonally attend, and proof ſhall be made thereof to the ſatisfaction of ſuch court) deſire further time to inform himſelf of the matters contained therein; ſuch court may remand the priſoner, and direct him, and the perſon diſſatisfied, to appear either in perſon or by his attorney, on ſome other day at fartheſt within the firſt week of the term next following the time of ſuch examination; but ſooner if ſuch court ſhall think fit.

And all objections which ſhall be made as to the inſufficiency in point of form againſt the ſchedule, ſhall be only made the firſt time ſuch priſoner ſhall be brought up.

And if at ſuch ſecond day, the creditor diſſatisfied ſhall not appear, or ſhall be unable to diſcover any eſtate or effects of the priſoner omitted in the account ſet forth in his petition; in ſuch caſe, the court ſhall order the priſoner to be diſcharged, on his executing ſuch aſſignment and conveyance as aforeſaid: unleſs ſuch creditor ſhall inſiſt upon his being detained, and ſhall agree by writing ſigned by him (or by his attorney, in caſe ſuch creditor ſhall be out of *England*) to pay weekly a ſum not exceeding 2 s. 4 d. as ſuch court ſhall think fit, to the ſaid priſoner, to be paid weekly every Monday; and in ſuch caſe, the priſoner ſhall be remanded: But if any failure ſhall be made in the payment thereof, ſuch priſoner, upon application in term time to ſuch court, or in vacation time to any judge of ſuch court, may by order of ſuch court or judge be diſcharged, on his executing ſuch aſſignment as aforeſaid; proof being made on oath, of the non-payment, for any week, of ſuch ſum.

And if any priſoner ſhall refuſe to take the ſaid oath, or ſhall be detected before ſuch court or judge of falſity therein, or ſhall refuſe to execute ſuch aſſignment; he ſhall preſently be remanded. *ſ.* 13.

Provided that where more creditors than one ſhall deſire to have ſuch priſoner detained; every of ſuch creditors ſhall only reſpectively pay ſuch ſum, not exceeding 1 s. 6 d. a week, as the court ſhall order. *ſ.* 14.

But

But where any priſoner ſhall be charged in execution in any county gaol, or in any other priſon above 20 miles from Weſtminſter hall or from the court out of which the execution iſſued; then, on the like petition as aforeſaid, to the court from whence ſuch execution iſſued, or in the priſon of which ſuch priſoner is and ſtands charged in execution; and on affidavit in like manner as aforeſaid being made and left with ſuch petition; ſuch court, on being ſatisfied with the truth of ſuch affidavit, ſhall make a rule to cauſe the priſoner to be brought to the next aſſizes (or great ſeſſions in Wales and Cheſhire) to be holden for the place where he ſhall be impriſoned; and the expence of bringing him not exceeding 1 s. a mile, ſhall be paid to the gaoler out of the priſoner's eſtate if the ſame ſhall be ſufficient to pay ſuch expence; and if not, then to be paid by the treaſurer of the county or place in which ſuch priſoner ſhall be impriſoned, as ſhall be allowed by the judge; and the creditors, or their executors or adminiſtrators, ſhall by order of the court from whence the proceſs iſſued, be ſummoned to appear at the ſaid aſſizes, if they can be met with; if not, then the attorney, laſt employed for ſuch creditors; and a copy of ſuch order ſhall be ſerved on every ſuch creditor, or his executors or adminiſtrators, or left at his dwelling houſe or uſual place of abode, or with his attorney laſt employed, 14 days at leaſt before ſuch aſſizes. And upon affidavit of ſuch ſervice thereof being laid before the judge of aſſize, he ſhall, on being ſatisfied with the truth of ſuch affidavit, appoint a time for hearing the matter of the petition, on ſome certain day and time, on the crown ſide of ſuch court, during ſuch aſſizes. And on the appearance of the ſaid creditors; or, in default of their appearance, either in perſon or by attorney, then on proof of their being duly ſerved with the notice, and of a copy of the ſchedule being compriſed in ſuch notice, and of the rule of ſuch court for their appearance being duly ſerved; the judge ſhall in a ſummary way examine into the matter of the petition, and adminiſter the oath to the priſoner, and make ſuch order in the premiſſes as to him ſhall ſeem meet, and proceed in manner as aforeſaid concerning the priſoner's diſcharge, and give the ſame judgment, relief, and directions relating thereunto, as any court out of which the proceſs ſhall iſſue is herein before directed to do: And the order of the ſaid judge ſhall ſtand good, and be entred upon record in ſuch aſſizes; and a copy thereof (ſigned by

by the judge) ſhall be tranſmitted to the court from whence the execution iſſued, to be there alſo entred upon record. *ſ.* 15.

How compellable to deliver up.

7. By the ſaid act of 32 *G.* 2. *c.* 28. If any priſoner who ſhall be charged in execution, for any debt or damages not exceeding 100 l. beſides coſts of ſuit, ſhall not within three months next after his commitment make ſatisfaction to his creditors who charged him in execution; any ſuch creditor or creditors may require him, on giving 20 days notice to him in writing, that they deſign to compel him to give in to the court from which the proceſs iſſued, or into the court in the priſon whereof he ſhall be removed by habeas corpus, or ſhall remain or be charged in execution, within the firſt ſeven days of the term next after the expiration of the ſaid 20 days, in reſpect to any priſoner charged in any priſon belonging to the courts at Weſtminſter; and at the ſecond court which ſhall be held by any ſuch other court of record after the expiration of the ſaid 20 days, in reſpect to any priſoner charged in any priſon belonging to ſuch other court; and where ſuch priſoner ſhall be charged in execution in any county gaol or other priſon above 20 miles diſtant from Weſtminſter hall or from the court out of which the proceſs iſſued, then to give in upon oath at the aſſizes or great ſeſſions reſpectively, and on the crown ſide thereof, which ſhall be held for ſuch place next after the expiration of ſuch 20 days from the time of giving notice as aforeſaid, a true account in writing, to be ſigned by him, of all his real and perſonal eſtate, and of all incumbrances affecting the ſame, to the beſt of his knowledge and belief, in order that the eſtate and effects of ſuch priſoner may be deveſted out of him, and ordered by the court to be aſſigned and conveyed for the benefit of ſuch his creditors. And every ſuch creditor, requiring ſuch priſoner to be brought up as aforeſaid, ſhall alſo give 20 days like notice in writing of his intention to require ſuch priſoner to be brought up, to every other creditor at whoſe ſuit ſuch priſoner ſhall be detained or charged in cuſtody in ſuch gaol, if they can be found; and if not, then to the ſeveral attornies laſt employed: and ſhall alſo give a like notice in writing to the ſheriff or gaoler of ſuch his intention to have ſuch priſoner brought up, and to require ſuch ſheriff or gaoler to bring him up accordingly, 20 days at leaſt before the time appointed for him to be brought up. And thereupon ſuch ſheriff or gaoler ſhall, at the coſts of ſuch creditor, cauſe ſuch priſoner to be brought

brought to ſuch court as by the notice is required, together with a copy of the cauſe or cauſes of his detainer: and if ſuch ſheriff or gaoler, on ſuch notice given to him as aforeſaid, and tender made to him by ſuch creditor of reaſonable charges not exceeding 1 s. a mile, ſhall neglect or refuſe to bring him up as aforeſaid; he ſhall forfeit 20 l. to the party grieved, with treble coſts. And the priſoner ſo brought up, ſhall on proof of ſuch notices being given as aforeſaid, deliver in there in open court, upon oath, a full true and juſt account, diſcloſure, and diſcovery in writing, of the whole of his real and perſonal eſtate, and of all books, papers, writings, and ſecurities relating thereto, and alſo of all incumbrances then affecting the ſame, and the reſpective times when made, to the beſt of his knowledge and belief (except the neceſſary wearing apparel and bedding of him and his family, and the neceſſary tools or inſtruments of his trade or calling, not exceeding the value of 10 l. in the whole): which account ſhall be ſubſcribed by him. And on delivering in of ſuch account, the eſtate and effects of ſuch priſoner ſhall be aſſigned and conveyed by him, by a ſhort indorſement on the back of the ſaid account, to ſuch perſons as the court ſhall direct, in truſt and for the benefit of the creditors who ſhall have required ſuch priſoner to be brought up, and of ſuch other creditors (if any there be) at whoſe ſuit ſuch priſoner ſhall be charged in cuſtody or in execution in any ſuch gaol, and who ſhall, by any memorandum or writing ſigned by them before ſuch aſſignment made, conſent to ſuch priſoner's being diſcharged, and to accept a proportionable dividend of ſuch priſoner's effects; and if there be no other ſuch creditor, or being ſuch, if ſuch creditors ſhall not agree in writing to diſcharge ſuch priſoner and to accept ſuch dividend, then in truſt for the creditors only who ſhall require ſuch priſoner to be brought up. And by ſuch aſſignment and conveyance, all the priſoner's eſtate and effects ſhall be veſted in the creditors to whom the ſame ſhall be aſſigned in truſt as aforeſaid. And upon ſuch diſcovery, aſſignment, and conveyance being made, the court ſhall diſcharge the priſoner in the actions and charges of every ſuch creditor, who required the priſoner to be brought up, or who ſigned ſuch conſent as aforeſaid; on paying 2 s. 6 d. diſcharge fee, and no more, to the officers of the court. And no ſtamp ſhall be neceſſary on ſuch aſſignment, or on any rule or order for ſuch diſcharge.—But all the future effects of ſuch priſoner (except the neceſſary wearing apparel of him

and

and his family, and the neceſſary tools or inſtruments of his trade or calling) ſhall be liable to ſatisfy his debts, if the ſame ſhall not be fully paid from his eſtate ſo aſſigned as aforeſaid; and no advantage in any ſuit ſhall be taken by him, for that the cauſe of action did not accrue within ſix years next before the commencement of ſuch ſuit, unleſs he was intitled to take ſuch advantage before he ſtood charged in cuſtody by virtue of the original ſuit or action. —And if he ſhall neglect or refuſe to deliver in and ſubſcribe ſuch account as aforeſaid, within the time herein before appointed, or within 60 days then next following, without making appear ſome juſt excuſe to be allowed of by the court; or ſhall refuſe to aſſign or convey his eſtate and effects according to the order of ſuch court; he ſhall, on conviction upon indictment, be tranſported for 7 years: And if he ſhall deliver in a falſe account, or deſignedly conceal and not inſert in the account any books, papers, ſecurities, or writings relating to his eſtate and effects, with intent to defraud his creditors, and ſhall be thereof convicted on indictment, he ſhall ſuffer as for wilful perjury. *ſ.* 16, 17.

Aſſignees may compound.

8. By the ſaid act of 32 *G.* 2. *c.* 28. the aſſignees may compound with any debtors or accountants to ſuch priſoner, and take ſuch reaſonable part of any debt due, as can upon ſuch compoſition be gotten; and alſo may ſubmit matters to arbitration, relating to the priſoner's eſtate and effects, which ſhall be binding to all the parties. *ſ.* 21.

And where mutual credit hath been given between the priſoner and any other, before the delivery of the ſchedule; the aſſignees may ſtate and allow the account between them, and receive the balance. *ſ.* 23.

Miſbehaviour in the aſſignees.

9. And it ſhall be lawful for the reſpective courts at Weſtminſter from whence the proceſs iſſued; or where the priſoner ſhall have been charged in execution by proceſs iſſued out of any other court, it ſhall be lawful for the judges of the courts of king's bench, common pleas, and exchequer, or any of them, from time to time, on the petition of any creditor who had charged ſuch priſoner in execution, or of ſuch priſoner, complaining of any inſufficiency, fraud, miſmanagement, or other miſbehaviour of any aſſignee, to order the parties to attend thereon; and upon hearing, they ſhall make ſuch order, either for the removal of ſuch aſſignee and appointing a new one, or for the juſt management of the effects, as to them ſhall ſeem meet. *ſ.* 22.

10. If

10. If the effects aſſigned ſhall not ſatisfy the whole debt, and the gaoler's fees; the gaoler ſhall receive only a proportionable dividend with the other creditors. *ſ.* 19. Gaoler to have only his dividend.

11. A priſoner diſcharged ſhall never after be arreſted or liable to action for the ſame debt, unleſs convicted of perjury. *ſ.* 20. Priſoner diſcharged ſhall not be again arreſted.

12. But nevertheleſs, the judgment againſt him ſhall continue in force, and execution thereon may be had at any time againſt his lands and goods, other than his neceſſary wearing apparel and bedding for himſelf and family, and the neceſſary tools of his trade or occupation not exceeding 10*l.* value in the whole. *ſ.* 20. But his effects ſhall be liable.

13. If any perſon who ſhall take any oath as by this act required to be taken, ſhall upon any indictment for perjury be convicted by confeſſion or verdict; he ſhall ſuffer as for wilful perjury; and ſhall alſo be liable to be taken on any proceſs de novo, and ſhall never after have the benefit of this act. *ſ.* 18. Perſons guilty of perjury.

14. No perſon who ſhall have taken the benefit of any act for the relief of inſolvent debtors, ſhall have any benefit under this act; nor ſhall be deemed within the meaning of it, ſo as to gain any diſcharge, unleſs compelled by any creditor to deliver up his eſtate and effects. *ſ.* 24. Perſons not relievable having taken the benefit of any former act.

XI. Concerning the priſons of the king's bench *and* marſhalſea.

The juſtices in *Eaſter* ſeſſions ſhall ſet down what ſums ſhall be ſent out of every county or place corporate, for the relief of the poor priſoners of the *king's bench* and *marſhalſea*, ſo as there be ſent out of every county yearly 20*s.* at the leaſt to each of the ſaid priſons; to be paid by the high conſtables out of the general county rate, to two ſuch treaſurers or one of them, as by the more part of the juſtices of the county ſhall be elected to be treaſurers: which treaſurers, on the firſt day of *Trinity* term yearly, ſhall pay over the ſame to the lord chief juſtice of *England*, and knight marſhal, or to whom they ſhall appoint, taking their acquittance for the ſame, or in default of the chief juſtice, to the next moſt antient juſtice of the *king's bench*, equally to be divided between the priſoners of the *king's bench* and *marſhalſea* priſons. 43 *El. c.* 2. *ſ.* 12, 13, 14. 11 *G.* 2. *c.* 20. *ſ.* 1. 12 *G.* 2. *c.* 29.

And

And if the treaſurer ſhall neglect or refuſe, the king's bench may make a rule on him, requiring him to pay the ſame; and obedience to ſuch rule may be inforced as other rules of the ſaid court, at the coſts and charges of the treaſurer. 11 *G.* 2. *c.* 20. *ſ.* 2. 4.

And that the treaſurer may be the better amenable to the ſaid court, he ſhall within 30 days after his election or appointment, under the like penalty, tranſmit his name and place of abode to the clerk of the crown in the king's bench, to be entred by him; for which entry no fee ſhall be paid. *ſ.* 3.

Gauger. See Exciſe.
Gin. See Exciſe.
Glaſs. See Exciſe.
Good behaviour. See Surety.
Grand larceny. See Larceny.
Greyhound. See Game.

Gunpowder.

Who may make gunpowder.

1. BY an act made in the 16 *C.* 1. *c.* 21. (to wit, in 1640, being the laſt ſtatute of force in that king's reign) All ſubjects may make and ſell gunpowder, and bring into the kingdom ſalt petre, brimſtone, or any other materials for the making of it.

And by a ſtatute made in the firſt year of the reign of king *James* the 2d, (which is alſo ſomewhat remarkable) it is enacted, that if any perſon ſhall obtain a grant for the ſole making or importing of gunpowper, he ſhall incur a præmunire. 1 *J.* 2. *c.* 8. *ſ.* 3.

Shipping or landing of gunpowder, or firing of guns on the Thames above Blackwall.

2. By the 5 *G.* 2. *c.* 20. No maſter of any veſſel outward bound, ſhall receive on board any gunpowder, either as merchandize or ſtore for the voyage (except for his majeſty's ſervice) on the *Thames* above *Blackwall*; on pain of 5 l. for every 50 lb. weight, and ſo in proportion. *ſ.* 2.

And the maſter of every veſſel coming into the *Thames*, ſhall land all the powder on board, either before arrival at *Blackwall*, or within 24 hours (if the weather will permit) after he comes to anchor there, or at the place of unloading; on pain of 5 l. for every 100 lb. weight. *ſ.* 3.

And

And if any officer of any ſhip (except the king's) ſhall between *London bridge* and *Blackwall*, keep any gun loaded with ball, or fire any gun on board above *Blackwall*, before ſunriſing or after ſunſetting; he ſhall forfeit for ſuch gun loaded 5 s. and for ſuch gun fired 10 s. *ſ.* 4.

And the corporation of *Trinity houſe* at *Deptford ſtrond*, may appoint a perſon to inſpect veſſels; and if any ſuch officer obſtruct him, he ſhall forfeit 5 l. *ſ.* 5.

And the penalties ſhall go to the poor of the corporation. *ſ.* 6.

And two juſtices of *London*, or the reſpective counties where the offence ſhall be committed, ſhall on complaint in ten days ſummon the offender, or after oath made of the offence may iſſue their warrant for apprehending him, and on appearance or contempt may convict him either by oath of witneſſes, or confeſſion, or his own view, and levy the penalty by diſtreſs, and if not redeemed in five days, by ſale; for want of diſtreſs he ſhall be impriſoned for three months, or till paid: and perſons aggrieved may appeal to the next ſeſſions. *ſ.* 7.

Keeping gunpowder in London.

3. No perſon not being a dealer in gunpowder, ſhall keep more than 50 lb. or being a dealer, not more than 200 lb. longer than 24 hours, at any time in any houſe or place, or in any houſes or other places, either under the ſame roof, or by dividing the ſame, and diſpoſing thereof under different roofs, or in any yard or yards, within *London* and *Weſtminſter*, or the ſuburbs thereof, or within three miles of the *Tower*, or of St. *James*'s; or within two miles of any magazine now erected (that is in the year 1718,) for keeping gunpowder, belonging to the king for the uſe of the publick; or on the *Thames*, except in veſſels paſſing or detained by tides or bad weather (except carts and other carriages loading or unloading, or paſſing on the highway); on pain of forfeiting the ſame, and the value thereof, with full coſts, to him who ſhall ſue in any court of record at *Weſtminſter* in 30 days. 5 *G. c.* 26. *ſ.* 1. 11 *G. c.* 23. *ſ.* 1. 15 & 16 *G.* 2. *c.* 32. *ſ.* 1.

And any juſtice of the peace within the ſaid limits, on demand by any inhabitants ſhewing a reaſonable cauſe, may iſſue his warrant to ſearch in the day time, for dangerous quantities of gunpowder, and break open any places if there be occaſion, and the ſearchers may ſeize, and may remove the ſame in 12 hours out of the ſaid

limits, and detain the ſame till it be determined in the courts whether it be forfeited or not. 15 & 16 G. 2. c. 32. ſ. 2.

Perſons permitting others to keep it.

4. And perſons permitting others to keep gunpowder in any places not belonging to the owners of ſuch gunpowder, ſhall forfeit 1 s. a pound. 15 & 16 G. 2. c. 32. ſ. 3.

Carrying gunpowder in the ſtreets of London.

5. No perſon ſhall carry in the ſtreets of *London* or *Weſtminſter*, or the ſuburbs thereof, more than 20 hundred weight of gunpowder at one time; and all gunpowder carried in the ſaid ſtreets in any carts or carriages, ſhall be carried in covered carts or carriages, and the barrels cloſe jointed and hooped, and put into caſes of leather or canvas; and gunpowder carried by man or horſe, ſhall be put into caſes of leather or canvas, and entirely covered therewith: and if any ſhall be carried otherwiſe, it ſhall be forfeited, and may be ſeized by any perſon to his own uſe, the offender being thereof convicted before two juſtices. 5 G. c. 26. ſ. 4.

Keeping gunpowder elſewhere.

6. By the 22 G. 2. c. 38. No perſon ſhall keep gunpowder for more than 24 hours at any one time, in greater quantity than 400 lb. weight, in any houſe or other place, in any city or the ſuburbs thereof, or in any market town, or within 100 yards thereof, or within two miles of any of the king's palaces, or one mile of any the king's magazines; nor ſhall keep, for more than 24 hours at any time, a greater quantity than 3000 lb. weight in any houſe or other place. 22 G. 2. c. 38. ſ. 1.

And any two juſtices, on demand made, and a reaſonable cauſe aſſigned, by any pariſh officer or two houſeholders inhabiting where it is kept, ſhall iſſue their warrant for ſearching in the day time any houſe, ſhop, or other place, and breaking open the doors thereof, if there be occaſion; and if upon ſuch ſearch, more than 400 lb. weight, or 3000 lb. weight reſpectively as above ſhall be found, all exceeding the ſaid quantities ſhall be ſeized and detained, and forfeited to any perſon who ſhall ſue in three months in any court at *Weſtminſter*; which court ſhall give judgment for recovery of the ſame or the value thereof with full coſts. ſ. 2.

But no penalty ſhall be incurred on account of a greater quantity than 30 hundred weight, kept within any warehouſe or magazine already built for that purpoſe (that is, in 1749,) unleſs the juſtices at their quarter ſeſſions ſhall, on complaint by two inhabitants near, adjudge the ſame

to

to be dangerous, and until ſix months after ſuch adjudication; and provided the ſame be not ſituate in any city or the ſuburbs thereof, or in any market town, or within 100 yards thereof, or within two miles of any of the king's palaces, or one mile of any of the king's magazines. *ſ.* 7.

7. And it ſeems that erecting powder mills, or keeping powder magazines near a town, is a nuſance, for which an indictment or information will lie. For in the caſe of *K.* and *Williams*, *E.* 12 *W.* there was an indictment againſt *Roger Williams*, for keeping 400 barrels of powder near the town of *Bradford*, and he was convicted accordingly. And in *K.* and *Taylor*, *T.* 15 *G.* 2. The court granted an information againſt the defendant as for a nuſance, on affidavits of his keeping great quantities of gunpowder near *Maldon* in *Surry*, to the indangering the church and houſes where he lived. *Str.* 1167. (or rather, it ſhould have been expreſſed, to the indangering the lives of his majeſty's ſubjects.) Erecting powder mills, a nuſance.

8. No perſon ſhall convey at any one time, in any waggon or other carriage, a greater quantity than 2500 pounds weight; or more than 5000 pounds weight in any open veſſel on any river, within one mile of any city or market town: And all ſuch gunpowder ſhall be carried in covered carts and carriages; and the barrels ſhall be cloſe joined and hooped, and ſecured that no part thereof be ſcattered in the paſſage; on pain of being ſeized and forfeited to the informer, on proof of the offence before two juſtices. 22 *G.* 2. *c.* 38. *ſ.* 3. Carrying gunpowder elſewhere than in London.

9. But none of the ſaid acts ſhall extend to any magazines belonging to the crown; or to hinder the trying of gunpowder by his majeſty's officers; or to the carrying of gunpowder to and from the king's magazines; or with forces in their march. 5 *G.* *c.* 26. *ſ.* 5. 11 *G.* *c.* 23. *ſ.* 4. 15 & 16 *G.* 2. *c.* 32. *ſ.* 6. 22 *G.* 2. *c.* 38. *ſ.* 5. Exceptions.

10. The juſtices in ſeſſions ſhall, on application to them made, appoint convenient plots of ground, two miles diſtant from any city or market town, not exceeding two acres, with the uſe of convenient roads leading thereto, for erecting warehouſes for keeping gunpowder in any quantity, firſt agreeing with the proprietor; and if they cannot agree, the ſaid juſtices ſhall iſſue their warrant to the ſheriff to impanel and return a jury, who ſhall on oath (to be adminiſtred by the ſaid juſtices) inquire into the value of the ground, with the uſe of convenient roads leading thereto: And all ſuch verdicts and inquiſitions Seſſions to appoint places for warehouſes.

ſhall be kept with the records of the ſeſſions, and be concluſive to all parties: And the ſaid juſtices may ſend for perſons intereſted, and examine the parties and witneſſes on oath: And the ſum to be aſſeſſed as aforeſaid, not exceeding 30 years purchaſe, ſhall be paid to the proprietor; and on ſuch payment, or in caſe of refuſal to accept it, on leaving it with the ſaid juſtices for the proprietor, the inheritance of the grounds, and uſe of the roads leading thereto, ſhall be veſted in the purchaſers and their aſſigns, for the purpoſes aforeſaid, and not otherwiſe: And the warehouſes to be built thereon, ſhall be built in ſuch manner, as will moſt effectually render them ſafe and ſecure. 22 *G.* 2. *c.* 38. *ſ.* 6.

Working with hammers in warehouſes.

11. If any perſon ſhall work with any iron hammer, or hammer plaited with iron or ſteel, in any warehouſe or place while any gunpowder is there; he ſhall on conviction within one month, by the oath of one witneſs, before one juſtice, forfeit 20 s. to the informer; to be levied by diſtreſs by warrant of ſuch juſtice; for want of ſufficient diſtreſs, to be committed to the houſe of correction, to be kept to hard labour not exceeding one month, nor leſs than 14 days. 11 *G.* *c.* 23. *ſ.* 3.

Doing any thing to indanger the firing it.

12. Every perſon imployed in any ſtorehouſe where gunpowder is kept, or in carrying gunpowder from one place to another, being convicted before one juſtice, of wilfully committing any act, whereby ſuch gunpowder may be in danger of taking fire, ſhall forfeit 5 l. to the informer, for every 100 pounds weight of gunpowder contained in ſuch ſtorehouſe, or which he ſhall be imployed in conveying; and on non-payment thereof, ſhall be committed to the publick gaol, without bail, not exceeding ſix months. 22 *G.* 2. *c.* 38. *ſ.* 4.

Guns. See Game.

Habeas Corpus. See **Bail.**

Hackney coaches and chairs.

For the duty on coaches, see title **Exciſe.**

1. THE king may appoint perſons not exceeding five, to be commiſſioners for regulating hackney coaches within the bills of mortality. 9 *An.* *c.* 23. *ſ.* 1. Commiſſioners.

2. Which commiſſioners ſhall under hand and ſeal licenſe hakney coaches within the bills, not exceeding 800; and on every licence ſhall be reſerved 5s. a week, to be paid monthly. 9 *An.* *c.* 23. *ſ.* 2. Licenſing.

And they ſhall alſo licenſe hackney chairs within the bills aforeſaid, not exceeding 400; reſerving a rent of 10s. a year, to be paid quarterly. 9 *An.* *c.* 23. *ſ.* 3. 10 *An.* *c.* 19. *ſ.* 158. 12 *G.* *c.* 12. *ſ.* 15.

3. Every coach and chair ſhall have a diſtinct mark on each ſide; and if any ſhall alter ſuch mark, he ſhall forfeit 5l. half to the informer, and half to the king. 9 *An.* *c.* 23. *ſ.* 4. Mark.

4. No horſe to be uſed with any hackney coach, ſhall be under 14 hands high. 9 *An.* *c.* 23. *ſ.* 4. Size of the horſes.

5. No perſon ſhall drive or let to hire any hackney coach without licence; on pain of 5l. nor ſhall carry any perſon for hire in a hackney chair, without licence; on pain of 40s. in like manner. 9 *An.* *c.* 23. *ſ.* 4. Penalty of driving without licence.

And by the 1 *G.* *ſt.* 2. *c.* 57. No unlicenſed perſon ſhall ply with any coach or hearſe, or ſhall let to hire any mourning coach, within the bills aforeſaid, on pain of 5l. as for driving unlicenſed. *ſ.* 3.

And if any perſon ſhall drive a mourning coach to a funeral, not having a number on it, or except it be a coach attending the maſter or ſome of his family; on information given to the commiſſioners, they may ſummon the driver, and unleſs he prove an order from the maſter to attend at the funeral, the driver or the undertaker ſhall forfeit 5l. *ſ.* 4.

Limitation of diſtance.

6. Every licenſed coachman, plying for hire, ſhall be obliged and compellable, on every day of the week, at ſeaſonable times, to go any where within the diſtance of ten miles from the city of *London* or *Weſtminſter*, 7 *G.* 3. *c.* 44. *ſ.* 12.

Rates.

7. And the coachman ſhall not take above the rate of 12*s.* 6*d.* a day, 7 *G.* 3. *c.* 44. *ſ.* 17. reckoning 12 hours to the day; and by the hour, not above 18*d.* for the firſt hour; and 12*d.* for every hour after: And no perſon ſhall pay from any of the inns of court or thereabouts to any part of St. *James*'s or the city of *Weſtminſter* (except beyond *Tuttle-ſtreet*) above 12*d.* and the ſame prices from the ſame places to the inns of court or thereabous; and from the inns of court or thereabouts, to the *Royal Exchange* 12*d.* and if to the *Tower*, or *Biſhopſgate-ſtreet*, or *Aldgate*, or thereabouts 18*d.* and ſo from the ſaid places to the ſaid inns of court as aforeſaid: and the like rates from and to any place, at the like diſtance, within the places before-mentioned. 9 *An.* *c.* 23. *ſ.* 6.

And no perſon ſhall be obliged to pay above 12*d.* for a coach for any diſtance (not above ſpecified) not exceeding one mile and four furlongs; nor above 1*s.* 6*d.* for any diſtance above a mile and four furlongs, and not exceeding two miles. *ſ.* 7.

And a chairman may take for any diſtance not exceeding one mile, 12*d.* for any diſtance above one mile and not exceeding one mile and four furlongs, 1*s.* 6*d.* for every further diſtance not exceeding four furlongs, 6*d.* and by the hour, 18. for the firſt hour, and 6*d.* for every half hour after. 7 *G.* 3. *c.* 44. *ſ.* 13.

By-laws.

8. And the commiſſioners may make by-laws, to bind all perſons licenſed, and the renters of ſuch licences, and the drivers. 9 *An.* *c.* 23. *ſ.* 16. 1 *G.* *ſt.* 2. *c.* 57. *ſ.* 1.

The ſame to be approved by the lord chadcellor, commiſſioners of the great ſeal, two chief juſtices, and chief baron, or three of them. 9 *An.* *c.* 23. *ſ.* 17.

Driver exacting.

9. And if any hackney coachman ſhall refuſe to go at, or exact more for his hire, than according to the above act, or by-laws; he ſhall forfeit a ſum not exceeding 3*l.* nor under 10*s.* 1 *G.* *ſt.* 2. *c.* 57. *ſ.* 2.

Miſbehaving.

10. And if any perſon who ſhall drive a coach, or carry a chair for hire, acting under a perſon licenſed, ſhall be guilty of miſbehaviour, by demanding more than his fare, or giving abuſive language, or other rude behaviour; he ſhall, on conviction on oath, forfeit not exceeding 20*s.* to the poor; and if he ſhall not be able, or refuſe to pay,

he

he ſhall be committed to *Bridewell* or ſome other houſe of correction, to be kept to hard labour for any time not exceeding one month, and alſo to receive the correction of the houſe, if the commiſſioners ſhall ſo think fit to order. 9 *An.* *c.* 23. *ſ.* 49. 7 *G.* 3. *c.* 44. *ſ.* 15.

And on miſbehaviour of a coachman or chairman by abuſive language, or otherwiſe, the commiſſioners may revoke his licence, or inflict on him a penalty not exceeding 3*l.* to the poor; and on non-payment, he ſhall be committed to *Bridewell* or ſome other houſe of correction, to be kept to hard labour for 30 days. 7 *G.* 3. *c.* 44. *ſ.* 16.

Perſons refuſing to pay.

11. And if any perſon ſhall refuſe to pay, or ſhall deface any coach or chair, any juſtice may grant his warrant to bring him before him; and on proof upon oath may award ſatisfaction to the party, and on refuſal to pay, may bind him over to the next ſeſſions, who may determine the ſame. 9 *An.* *c.* 23. *ſ.* 22.

Power of the juſtices.

12. The rents and penalties to be levied by diſtreſs, by warrant of three commiſſioners; which diſtreſs ſhall be ſold in ten days, returning the overplus, charges of the diſtreſs and of the warrant being firſt deducted (if on ſeven days notice they pay not the fine without ſuch warrant); and in default of diſtreſs, to be impriſoned till paid; and if any rent ſhall be unpaid for 14 days, the commiſſioners may withdraw the licence. 9 *An.* *c.* 23. *ſ.* 12.

And moreover, the breach of the by-laws, and of theſe rules and orders, may be puniſhed by any juſtice of the peace, mayor, bailiff, or other magiſtrate, where the offence ſhall be committed, in like manner as by the commiſſioners. 9 *An.* *c.* 23. *ſ.* 17. 1 *G.* *ſt.* 2. *c.* 57. *ſ.* 7. 4 *G.* 3. *c.* 36.

Note; the clauſe in the act of the 12 *G.* *c.* 12. abovementioned, was only to continue for 18 years; but by the 16 *G.* 2. *c.* 26. it was continued to *June* 24, 1760, *&c.* and by the 33 *G.* 2. *c.* 25. is further continued during ſuch time as any former act relating to the licenſing of hackney coaches or chairs, or any part thereof, ſhall be in force.

Which acts, as to the time of their continuance, ſeem to ſtand thus: The 9 *An.* *c.* 23. ſo far as it relates to this ſubject, was made to continue for 32 years; and the 10 *An.* *c.* 19. ſo far as it relates to this ſubject, was made to continue for 31 years; the 1 *G.* *ſt.* 2. *c.* 57. which explains and amends the 9 *An.* *c.* 23. doth conſequently attend

tend the fate of the ſame act of the 9 *An.* Now the 3 *G. c.* 7. *ſ.* 1. made the ſaid duties perpetual (ſubject to redemption by parliament), and perpetuated in like manner all the clauſes in the ſaid acts for the recovery of the ſaid duties. The 16 *G.* 2. *c.* 26. (by miſtake, as it ſeemeth) recites the ſaid act as temporary only, and continues them along with the ſaid act of the 12 *G.* to *June* 24, 1760, *&c.* And the 33 *G.* 2. *c.* 25. reciting the duties as perpetual (ſubject to redemption by parliament as aforeſaid) ſeemeth to ſuppoſe, that nevertheleſs the clauſes in the ſaid acts for the recovery of the ſaid duties are only temporary and near expiring; and therefore enacteth, that the ſeveral clauſes in the ſaid acts relating to the power of the commiſſioners and juſtices for the recovery of the ſaid duties, ſhall be in force during ſuch time, as any other part of the ſaid acts relating to the licenſing of hackney coaches or chairs ſhall be in force (that is, as it ſeemeth, until the ſaid duties ſhall be redeemed by parliament).

Harbour filling up. See **Rivers and Navigation.**

Hares. See **Game.**

Harepipes. See **Game.**

Hawkers and pedlars.

Licence duty.

1. THERE ſhall be paid by every hawker, pedlar, petty chapman, or any other trading perſon going from town to town, or to other mens houſes, and travelling either on foot, or with horſe, horſes, or otherwiſe (except as herein after excepted), carrying to ſell, or expoſing to ſale any goods, wares, or merchandizes, a duty of 4 l. for each year. And every perſon ſo travelling with a horſe, aſs, mule, or other beaſt bearing or drawing burden, ſhall pay 4 l. for each year he ſhall ſo travel with, over and above the ſaid firſt mentioned duty of 4 l. 9 & 10 *W.* *c.* 27. *ſ.* 1.

Trading perſon going from town to town] *T.* 31 *G.* 2. *Rex* v. *Little.* The conviction, being removed by certiorari, did ſet forth, that one *Thomas Preſton*, gentleman, came

came before the juſtice and informed him, that the defendant *Thomas Little*, in the pariſh of St. *Mary*, in the city and county of the city of *Litchfield*, was found offering to ſale ſilk handkerchiefs, and trading as an hawker, pedlar, or petty chapman; and that the ſaid *Thomas Little* did not, altho' required ſo to do, produce any licence as the law in that caſe directs: That the ſaid *Thomas Little*, being brought before the juſtice doth confeſs, that he the ſaid *Thomas Little* did offer to ſell ſilk handkerchiefs to the ſaid *Thomas Preſton*, in ſuch manner as is mentioned in the aforeſaid information; and that he had no licence for ſelling thereof; Whereupon the juſtice doth adjudge, that the ſaid *Thomas Little* is an hawker within the true intent and meaning of the ſtatute in that caſe made, and is guilty of the offence in the ſaid information laid to his charge.——It was moved to quaſh this conviction, upon two exceptions, 1. With reſpect to the perſon; that he is not brought within the deſcription of the acts, as going from town to town, and travelling on foot, or with horſe, horſes, or otherwiſe: but he is only generally deſcribed to be a perſon that traded as an hawker and pedlar, and offered to ſell a parcel of ſilk handkerchiefs to the informer. 2. With reſpect to the offence; the evidence is the defendant's own confeſſion; and the confeſſion extends no further than barely to the ſimple fact of offering to ſale ſilk handkerchiefs in ſuch manner as is charged upon him.——By lord *Mansfield* Ch. J. A ſingle act of ſelling a parcel of ſilk handkerchiefs to a particular perſon, is not a proof that he was ſuch a hawker, pedlar, or petty chapman, as ought to take out a licence, by virtue of the acts of parliament. It is certainly of the eſſence of the crime of not producing a licence, that he muſt be ſuch a perſon as ought to take out a licence. And the confeſſing is only of the fact, that he offered to ſell the handkerchiefs to *Thomas Preſton*, not that he traded as an hawker. Convictions ought to be taken ſtrictly; and it is reaſonable that they ſhould be ſo, becauſe they muſt be taken to be true againſt the defendant. I do not ſay, that it is neceſſary to define exactly, what a hawker, pedlar, or petty chapman is. But it is neceſſary to alledge and ſhew that he ſold the goods, or traded as one.—— Mr. juſtice *Deniſon* concurred, for the ſame reaſons; and thought the material averment to be here wanting; it not being averred that he was ſuch a hawker, pedlar, or petty chapman, as ought to take out a licence.——By Mr. juſtice *Wilmot* (Mr. juſtice *Foſter* being abſent): I am clear-

ly of the ſame opinion. For certainly a man may ſell goods as an hawker, pedlar, or petty chapman, without being ſuch a perſon as is obliged to take out a licence. And if he is not obliged to take out a licence, moſt undoubtedly he ought not to be convicted in a penalty for not producing one. Now here, it appears to me, that the juſtice hath convicted the man of an offence, of which he hath not proved him to be guilty.—And by the court unanimouſly, the conviction was quaſhed. *Burrow. Mansfield.* 609.

Expoſing to ſale any goods, wares, or merchandizes] But by the 9 *G.* 2. *c.* 35. he ſhall not, by virtue of ſuch licence, ſell or offer to ſale any *tea* or *ſpirituous liquors* (altho' he have a permit with the ſame); but the perſon to whom the ſame ſhall be offered may ſeize and carry the ſame to the next warehouſe, and may ſeize the offender and carry him before a juſtice, to be by him impriſoned and proſecuted for the penalties incurred for ſelling or offering the ſame to ſale without licence. *ſ.* 20.

And by the 7 *G.* 3. *c.* 43. if any *foreign cambrick* or *French lawn* ſhall be found in the poſſeſſion of any hawker, pedlar, or petty chapman; he ſhall forfeit the ſame, and alſo all the other goods in his pack, and ſhall alſo be adjudged to have forfeited his licence: half the ſaid goods to be diſpoſed to the uſe of the king, and half to the officer who ſhall ſue for the ſame; and if no officer ſhall ſue within one month, then any other perſon may ſue.

For each year he ſhall ſo travel with] The ſenſe is here manifeſtly imperfect. The intention of the act undoubtedly was to expreſs, that over and above the firſt duty of 4 l. a further duty of 4 l. ſhould be paid for *every horſe, aſs, mule, or other beaſt*: Otherwiſe a man may carry in a waggon as many goods as would furniſh a large ſhop, for the ſame duty as he may carry one horſe load. And ſo he may, as the act now ſtands. Thus in the caſe of *K.* and *Robotham*, *H.* 3 *G.* 3. On a conviction upon this act being removed into the king's bench by certiorari, exception was taken, that the conviction was, for not having a licence to produce for *each horſe* he travelled with, although it appeared that he had a regular licence to travel with *an horſe*; which licence juſtified his travelling with *one or more*: For the words of the act are, that he ſhall pay the ſaid additional duty *for each year he ſhall ſo travel with*, and not *for each horſe* or other beaſt of burden. And

the

the conviction was quaſhed.——Aud the miſtake is no other than this: By the 8 & 9 *W.* *c.* 25. Every pedlar or other ſuch perſon travelling as aforeſaid was to pay (for that year only) a duty of 4 l. and a further additional duty of 4 l. *for each horſe, aſs, or mule, or other beaſt bearing or drawing burden, he or ſhe ſhould ſo travel with.* This ſtatute of the 9 & 10 *W.* *c.* 27. re-enacts the ſame for three years (and the ſaid duties afterwards were made perpetual); only in this latter act, the words in the tranſcript have been dropped, which are neceſſary to compleat the ſenſe, and to anſwer the intention of the legiſlature; for evidently, the ſentence ought to have run thus,—— *the ſum of* 4 l. *for each year, for each horſe, aſs, or mule, or other beaſt bearing or drawing burden, he or ſhe ſhall ſo travel with.*

Payment of the duty.

2. And every ſuch perſon, on receiving his licence, ſhall pay to whom the commiſſioners of the treaſury, or three of them ſhall appoint for licenſers, or their deputy, half the duty, and give ſecurity by bond, with one or more ſureties, to the king, for payment of the other half at the end of ſix kalendar months, unleſs he ſhall chuſe to pay down the other half, in which caſe he ſhall be allowed after 2 s. in the pound for prompt payment. 9 & 10 *W.* *c.* 27. *ſ.* 2.

Granting the licence.

3. And the commiſſioners for theſe duties, or two of them, ſhall (on the receipt and ſecurity given as aforeſaid) grant licences to be by them ſubſcribed; for which ſhall be taken only 1 s. unleſs ſuch perſon travel with a horſe or beaſt, and in that caſe ſhall be paid only 2 s. above the duties. 9 & 10 *W.* *c.* 27. *ſ.* 4.

Trading without a licence, or refuſing to ſhew it.

4. And if any ſuch perſon be found trading as aforeſaid, without, or contrary to ſuch licence; or if on demand made by any juſtice of the peace, mayor, conſtable or other peace officer of any town corporate or borough, where he ſhall ſo trade, ſhall not have his licence ready to be produced; *he ſhall forfeit* 12 *l.* half to the informer, and half to the poor of the pariſh wherein the offender ſhall be diſcovered; and for nonpayment thereof, ſhall ſuffer as a common vagrant, and be committed to the houſe of correction. 9 & 10 *W.* *c.* 27. *ſ.* 3. 3 & 4 *An.* *c.* 4. *ſ.* 4.

He ſhall forfeit 12 l.] *M.* 5 *G.* *K.* and *Beck.* Although the ſtatute here mentions nothing of *conviction*, yet nevertheleſs there ought to be a formal conviction; and a certiorari will lie for the removal of it. *Str.* 127.

And

And if any conſtable or other officer aforeſaid, ſhall refuſe or neglect, upon due notice, or his own view, to be aiding in the execution hereof, being thereunto required, and be thereof convicted on oath of one witneſs before one juſtice where the offence ſhall be committed; he ſhall forfeit 40 s. by diſtreſs and ſale by warrant of ſuch juſtice, half to the poor, and half to the proſecutor. 9 & 10 *W.* *c.* 27. *ſ.* 7.

And any perſon may ſeize and detain any ſuch hawker, pedlar, petty chapman, or other trading perſon, till he produce his licence if he have any, or if he be found trading without a licence, for ſuch reaſonable time as he may give notice to the conſtable, churchwarden, overſeer, or ſome other pariſh officer, who ſhall carry ſuch perſon ſo ſeized before a juſtice; who ſhall, either on confeſſion, or proof by witneſs upon oath, convict the offender, and by his warrant cauſe the ſum of 12 l. to be forthwith levied by diſtreſs and ſale of the offender's goods, wares, or merchandizes. 9 & 10 *W.* *c.* 27. *ſ.* 8.

Lending licences. 5. If any perſon ſhall lend or let out to hire his licence, he and alſo the perſon trading under colour thereof, ſhall forfeit each 40 l. half to the king, and half to him that ſhall ſue in any court of record. 3 & 4 *An.* *c.* 4. *ſ.* 4.

Counterfeiting licences. 6. If any perſon ſhall forge or counterfeit, or travel with a forged or counterfeited licence; he ſhall forfeit 50 l. half to the king and half to him that ſhall ſue in the courts at *Weſtminſter*, and ſhall alſo be liable to be puniſhed for forgery. 9 & 10 *W.* *c.* 27. *ſ.* 5.

Exceptions. 7. But nothing herein ſhall prohibit any perſon from ſelling acts of parliament, forms of prayer, proclamation, gazettes, licenſed almanacks, or other printed papers licenſed by authority; or any fiſh, fruits, or victuals; nor to hinder any perſon who is the real worker or maker of any goods or wares, or his children, apprentices, ſervants, or agents, from carrying abroad, expoſing to ſale, or ſelling any of the ſaid goods and wares of his own making, in any publick fair, market, or elſewhere; nor any tinker, cooper, glazier, plummer, harneſs mender, or other perſon uſually trading in mending kettles, tubs, houſhold goods, or harneſs, from going about and carrying with him proper materials for mending the ſame. 9 & 10 *W.* *c.* 27. *ſ.* 9.

Alſo perſons trading in the woollen and linen manufactures, and ſelling the ſame by wholeſale, ſhall not be deemed

deemed hawkers, pedlars, or petty chapmen. 3 & 4 *An.* *c.* 4. *ſ.* 14.

Alſo no maker or wholeſale trader in *Engliſh* bone lace, ſhall be deemed a hawker, pedlar, or petty chapman, 4 *G.* *c.* 6.

Alſo nothing herein ſhall extend to hinder any perſon from ſelling any goods in any publick fair or market. 9 & 10 *W.* *c.* 27. *ſ.* 12.

And nothing herein ſhall give any power for the licenſing of ſuch perſons to ſell any goods in cities, boroughs, towns corporate, or market towns, otherwiſe than they might have done before. 9 & 10 *W.* *c.* 27. *ſ.* 15.

8. Perſons ſued for any thing done herein, may plead the general iſſue, and have treble coſts. 9 & 10 *W.* *c.* 27. *ſ.* 6. Treble coſts.

Hawks and hawking. See **Game.**

Hay.

THE 2 *W. ſeſſ.* 2. *c.* 8. and 8 & 9 *W.* *c.* 17. and 31 *G.* 2. *c.* 40. do contain regulations concerning the ſelling of hay, ſtraw, and cattle within the bills of mortality, which are not general enough to be here inſerted at large.

Hedge breaking. See **Wood.**

Hemp.

IT ſhall not be lawful to any perſon to water any hemp or flax, in any river, running water, ſtream, brook, or other common pond, where beaſts uſed to be watered; on pain that every perſon offending ſhall forfeit 20 s. half to the king, and half to the party grieved, or any other who ſhall ſue in any court of record, leet, or law day. 33 *H.* 8. *c.* 17.

Herring fiſhery.

IF any perſon ſhall damnify or deſtroy, without conſent of the ſociety of the free *Britiſh* fiſhery, any of the nets, ſails, cordage, ſtores, or other materials belonging to the ſaid ſociety; he ſhall, on conviction on the oath of two witneſſes before one juſtice, forfeit to the ſociety treble value, by diſtreſs; and for want of ſufficient diſtreſs to be committed to the houſe of correction to hard labour for any time not exceeding three months, or till ſatisfaction be made. Proſecution to be in ſix kalendar months. 28 *G.* 2. *c.* 14. *ſ.* 9.

Hides and ſkins. See **Leather.**
High Conſtable. See **Conſtable.**
High treaſon. See **Treaſon.**

Highways in general.

NOTE; Bridges repaired by the pariſh or townſhip, and which conſequently come under the cognizance of the ſurveyor of the highways are comprehended under this title: County bridges are treated of under title **Bridges.**

For the ordering of ſtreets in cities and market towns, ſee title **Scavengers.**

THIS title, which before was greatly confuſed, is now rendered clear and intelligible by two judicious acts made in the 7 *G.* 3. repealing, in whole or in part, 35 acts of parliament relating to this ſubject, and reenacting the ſubſtance of all the ſame, with divers conſiderable amendments: which with ſome ſmall alterations made by the 8 *G.* 3. *c.* 5. are inſerted under the following ſections.

I. Con-

I. Concerning the highways in general.

II. Concerning turnpike roads in particular.

I. Concerning the highways in general.

I. What is a highway.
II. Of the ſpecial ſeſſions to be held for the highways.
III. Appointment of ſurveyors.
IV. Who are liable to repair, and in what proportion.
V. Compoſition inſtead of labour.
VI. Working.
VII. Materials how to be procured.
VIII. Removing obſtructions and annoyances.
IX. Direction poſts to be ſet up.
X. Penalty of deſtroying blocks, poſts, or battlements of bridges.
XI. Breadth of wheels, and number of horſes.
XII. Widening of highways.
XIII. General aſſeſſment of 6 d. in the pound.
XIV. Penalty of hindring the execution.
XV. Penalty of the ſurveyor for neglect of duty.
XVI. Surveyor's account.
XVII. Preſentment or indictment of highways in general.
XVIII. Preſentment by a juſtice.
XIX. Levying and application of fines and forfeitures.
XX. Appeal.
XXI. Limitation of actions.

I. What

I. What is a highway.

Three kinds of highways.

1. There are three kinds of ways; (1.) A foot way. (2.) A foot and horſe way, which is alſo a park or draft way. (3.) A foot, horſe, and cart way. 1 *Inſt.* 56.

Difference between a highway and a private way.

2. It ſeemeth that any one of the ſaid ways, which is common to all the king's people, whether it leads directly to a market town, or only from town to town, and does not terminate there, but is alſo a thoroughfare to other towns, may properly be called a highway. 1 *Haw.* 201.

For there were highways before there were market towns. And if it were eſſential to the conſtituting of a highway, that it ſhould expreſly lead from market town to market town; then it would follow, that the lord of a market, by forfeiting or ſurrendring his charter, might cauſe that to ceaſe to be a highway, which was a highway before; or the king, by granting a market in any place where there was no market before, might thereby conſequentially change the way to it from a private way into a highway.

And therefore, the diſtinction which is taken in ſome books, concerning this matter, ſeems to be very reaſonable; that every way from town to town may be called a highway, becauſe it is common to all the king's ſubjects; and conſequently that a nuſance therein is a common nuſance, and puniſhable by indictment; but that a way to a pariſh church, or to the common fields of a town, or to a private houſe, or perhaps to a village which terminates there, and is for the benefit of the particular inhabitants of ſuch pariſh, houſe, or village only, may be called a private way, but not a highway, becauſe it belongeth not to all the king's ſubjects, but only to ſome particular perſons, each of which, as it ſeems, may have an action on the caſe for a nuſance therein. 1 *Haw.* 201.

So if I have a private way without a gate, and a gate is hung up; an action lies upon the caſe, for I have not my way as I had before. *Litt. R.* 267.

So if one grants me a way, and afterwards digs trenches in it to my hindrance; I may fill them up again. *Godb.* 53.

But if a way which a man has, becomes not paſſable, or becomes very bad, by the owner of the land tearing it up with his carts, and ſo the ſame be filled with water; yet he who has the way cannot dig the ground to let out the water,

water, for he has no intereſt in the ſoil. *Godb.* 52. But in ſuch caſe, he may bring his action againſt the owner of the land for ſpoiling the way; or perhaps he may go out of the way, upon the land of the wrong doer, as near to the bad way as he can.

But where a private way is ſpoiled by thoſe who have a right to paſs thereon, and not thro' the default of the owner of the land; it ſeemeth that they who have the uſe and benefit of the way ought to repair it, and not the owner of the ſoil, unleſs he is bound thereto by cuſtom or ſpecial agreement.

How far outlets are part of the highway.

3. It hath been holden, that if there be an highway in an open field, and the people have uſed time out of mind, when the ways are bad, to go by outlets on the land adjoining, ſuch outlets are parcel of the way; for the king's ſubjects ought to have a good paſſage, and the good paſſage is the way and not only the beaten track; from whence it follows, that if ſuch outlets be ſown with corn, and the beaten track be foundrous, the king's ſubjects may juſtify going upon the corn. 1 *Haw.* 201.

How far a river may be an highway.

4. In books of the beſt authority, a river common to all men is called an highway. 1 *Haw.* 201.

Highway changed.

5. It ſeemeth to be agreed, that an ancient highway cannot be changed, without the king's licence firſt obtained upon a writ of *ad quod damnum* and an inquiſition thereon found, that ſuch a change will not be prejudicial to the publick; and it is ſaid, that if one change a highway without ſuch authority, he may ſtop the new way whenever he pleaſes; and it ſeemeth that the king's ſubjects have not ſuch an intereſt in ſuch new way, as will make good a general juſtification of their going in it as a common highway, but that in an action of treſpaſs brought by the owner of the land, againſt thoſe who ſhall go over it, they ought to ſhew ſpecially, by way of excuſe, how the old way was obſtructed, and the new one ſet out; alſo it is ſaid, that the inhabitants are not bound to keep watch in ſuch a new way, or to make amends for a robbery therein committed, or to repair it. 1 *Haw.* 201.

But by the 7 *G.* 3. *c.* 42. where any highways ſhall be incloſed after a writ of *ad quod damnum* iſſued, and inquiſition thereupon taken; any perſon that ſhall think himſelf injured by ſuch incloſure may appeal to any general quarter ſeſſions to be holden within four months after ſuch incloſure, in like manner as in caſes of appeal in other matters relating to the highways: and the determination of ſuch ſeſſions ſhall be final. *ſ.* 53.

[Note,

[Note, the writ of *ad quod damnum* is an orignal writ, iſſuing out of and returnable into the chancery, directed to the ſheriff to inquire by a jury, whether ſuch change will be detrimental to the publick, which inquiſition, being a proceeding only *ex parte*, is in its own nature traverſable; and heretofore the party grieved might be heard againſt it before the chancellor: But now, by this act, juriſdiction is given to the juſtices in ſeſſions to hear and determine appeals.]

However it is certain, that a highway may be changed by the act of God; and therefore it hath been holden, that if a water which has been an ancient highway, by degrees changes its courſe, and goes over different ground from that whereon it uſed to run, yet the highway continues in the new channel, in the ſame manner as in the old. 1 *Haw.* 202.

An highway incloſed by virtue of a ſpecial act of parliament (for dividing and incloſing common fields, common paſtures, or the like,) ſhall continue to be repaired by the pariſh or townſhip as it was before, unleſs otherwiſe directed by the act: for if he who incloſed the ground adjoining to the highway were in ſuch caſe obliged to repair, it might happen that his allotment of the common would not be worth the expence of repairing the way. *Burrow. Mansfield.* 461. Rex *v.* Inhabitants of Flecknow, H. 30 G. 2.

To whom the freehold of an highway belongeth.

6. The freehold of the highway is in him that hath the freehold of the ſoil; but the free paſſage is for all the king's liege people. 2 *Inſt.* 705.

H. 8 G. 2. Sir *John Lade* againſt *Shepherd*. Upon trial of an action of treſpaſs, a caſe was made; that the place where the ſuppoſed treſpaſs was committed, was formerly the property of the plaintiff, who ſome years ſince built a ſtreet upon it, which has ever ſince been uſed as a highway; that the defendant had lands contiguous, parted only by a ditch, and that he laid a bridge over the ditch, the end whereof reſted on the highway. And it was inſiſted for the defendant, that by the plaintiff's making it a ſtreet, it was a dedication of it to the publick; and therefore however he might be liable to an indictment for a nuſance, yet the plaintiff could not ſue him as for a treſpaſs on his private property. But by the court; it is certainly a dedication to the publick, ſo far as the publick has occaſion for it, which is only for a right of paſſage: but it never was underſtood to be a transfer of the abſolute property in the ſoil. So the plaintiff had judgment. *Str.* 1004.

II. Of the ſpecial ſeſſions to be held for the highways.

The juſtices of every county, riding, diviſion, city, corporation, precinct, or liberty reſpectively, ſhall hold one ſpecial ſeſſions for the highways yearly, on the firſt Monday in October, or within 15 days after; and other ſpecial ſeſſions from time to time, whenever they ſhall judge proper. 7 *G.* 3. *c.* 42. *ſ.* 1, 36, 45.

III. Appointment of ſurveyors.

1. The juſtices ſhall hold their ſaid October ſeſſions, at ſuch convenient place or places within their juriſdiction, as they ſhall judge proper; and ſhall give notice (A) of the time and place, to the conſtables of the reſpective pariſhes, townſhips, or places, at leaſt ten days before the holding of the ſaid ſeſſion. 7 *G.* 3. *c.* 42. *ſ.* 1. Notice of the time and place of appointment.

2. And on the 22d of September preceding the ſaid ſeſſions, unleſs that day be Sunday, and then on the day following, the conſtables, churchwardens, ſurveyors of the highways, and houſholders being aſſeſſed to any parochial or publick rate, of every pariſh, townſhip, or place, for which ſurveyors of the highways have been uſually appointed, ſhall aſſemble at the church or chapel of ſuch pariſh, townſhip, or place; or if there be no church or chapel, then at the uſual place of publick meetings, at the hour of eleven in the forenoon. And the major part of them ſo aſſembled, ſhall make a liſt of the names of at leaſt ten perſons living within ſuch reſpective pariſhes, townſhips or places, who each of them have an eſtate in lands, tenements, or hereditaments, lying within ſuch reſpective pariſh, townſhip, or place, in their own right, or in the right of their wives, of the value of 10 l. a year; or a perſonal eſtate of the value of 100 l.; or are occupiers or tenants of houſes, lands, tenements, or hereditaments, of the yearly value of 30 l. And if there ſhall not be ten perſons having ſuch qualification, then they ſhall inſert in ſuch liſt the names of ſo many as are ſo qualified, together with the names of ſo many of the moſt ſufficient and able inhabitants not ſo qualified, as ſhall make up the number ten, if ſo many can be found; if not, ſo many as ſhall be there reſident, —to ſerve the office of ſurveyor of the highways. 7 *G.* 3. *c.* 42. *ſ.* 1. Liſts to be made.

Notice to the perſons in the liſt.

3. And the conſtable ſhall, within 3 days after making the ſaid liſt, give perſonal notices to, or cauſe notices in writing to be left at the places of abode of the ſeveral perſons contained in ſuch liſt, informing them of their being ſo named; to the intent that they may ſeverally appear before the juſtices at the ſaid ſpecial ſeſſions, to accept ſuch office, if they ſhall be appointed thereto, or to ſhew cauſe, if they have any, againſt their being appointed. *id.*

Liſt returned to the ſpecial ſeſſions.

4. And the conſtable ſhall return ſuch liſt, to the juſtices at their ſaid ſpecial ſeſſions. *id.*

Appointment and charge.

5. And the ſaid juſtices then and there, from the ſaid liſts, according to their diſcretion and the largeneſs of the pariſh, townſhip, or place, ſhall by warrant under their hands and ſeals (B) nominate or appoint one, two, or more of ſuch perſons as aforeſaid, to be ſurveyor or ſurveyors of the highways of every ſuch pariſh, townſhip, or place reſpectively, for the year enſuing. *id.*

Which nomination and appointment ſhall by ſuch conſtable be notified to every ſuch perſon ſo nominated and appointed, within 3 days after ſuch nomination, by ſerving him with the ſaid warrant, or by leaving the ſame or a true copy thereof at his houſe or uſual place of abode. *id.*

And ſuch perſons ſo nominated ſhall be ſurveyors of the highways for the year enſuing, and ſhall take upon them and duly execute the ſaid office. *id.*

And the ſaid juſtices ſhall then and there give to ſuch of the ſaid ſurveyors as ſhall perſonally appear before them, a charge, for the better performance of their duty. *id.*

Penalty on refuſal to ſerve, and other appointed.

6. If any of the perſons ſo nominated and ſerved with the ſaid notice, ſhall refuſe or neglect to appear and accept the ſaid office, if appointed thereto in manner aforeſaid, at the ſpecial ſeſſion; or ſhall not, within 6 days after being ſerved with ſuch warrant of appointment, ſignify his acceptance thereof, either in perſon, or by writing, to one of the ſaid juſtices; he ſhall forfeit 5 l. 7 *G.* 3. *c.* 42. *ſ.* 1.

And in caſe of ſuch neglect or refuſal, the ſaid juſtices or any two of them, at the ſaid ſeſſions, or at any time afterwards, may nominate and appoint ſome other fit perſon or perſons named in the ſaid liſt; who, upon being ſerved with the warrant of appointment as aforeſaid, ſhall within one week afterwards ſignify to the ſaid juſtices or one of them, either in perſon or by writing, his

his or their acceptance of the ſaid office; and in caſe of neglect or refuſal as aforeſaid, ſhall forfeit the like ſum of 5 l. *id.*

And if no ſuch liſt ſhall be returned, or the perſon nominated ſhall not take upon him the office, or ſhall die in the execution thereof; the ſaid juſtices, or any two of them, ſhall appoint ſuch perſon as they ſhall think proper to execute the ſame. *id.*

Penalty of not making or returning the liſt, or giving notice.

7. If the conſtables, churchwardens, ſurveyors of the highways, and ſuch houſholders as aforeſaid, ſhall neglect or refuſe to make ſuch liſt; or if ſuch conſtable ſhall not return ſuch liſt when made, and give ſuch notice and ſerve ſuch warrant as aforeſaid; every of them ſo neglecting or refuſing ſhall forfeit 40 s. 7 *G.* 3. *c.* 42. *ſ.* 1.

Appointment of ſpecial ſurveyors, where ſalaries.

8. Provided always, that if two parts out of three of the perſons ſo to be aſſembled, ſhall agree in the choice of any particular perſon of ſkill and experience to ſerve the ſaid office, and in ſettling of a certain ſalary for his trouble therein, to be allowed by the ſaid juſtices, and paid out of the penalties, forfeitures, and compoſition money for that year; and ſhall return the name of ſuch perſon, together with the liſt as before directed, to the juſtices at their ſaid October ſeſſions: in ſuch caſe, it ſhall be lawful for the ſaid juſtices, if they ſhall think proper, to appoint ſuch perſon to be ſurveyor. Which ſurveyor ſo appointed, ſhall in all reſpects have the ſame power, and be liable to the ſame penalties and forfeitures for neglect of duty, as if he had been choſen and appointed from the liſt to be returned as aforeſaid. And the ſaid juſtices ſhall likewiſe in their diſcretion allow ſuch ſalary ſo ſettled as aforeſaid. 7 *G.* 3. *c.* 42. *ſ.* 2.

IV. Who are liable to repair, and in what proportion.

Pariſh in general to repair.

1. It ſeems to be agreed, that of common right (that is, by the common law) the general charge of repairing all highways lies on the occupiers of the lands in the pariſh wherein they are: But there is no doubt, but particular perſons may be burdened with the general charge of repairing a highway, in two caſes; namely, in reſpect of an incloſure, or by preſcription.

Repairing in reſpect of an incloſure.

2. For, a man may be bound to the repair of a highway, in reſpect of an incloſure of the land wherein it lies; as where the owner of lands not incloſed, next adjoining to the highway, incloſeth his lands on both ſides thereof;

in which caſe, he is bound to make a perfect good way, and ſhall not be excuſed for making it as good as it was at the time of the incloſure, if it were then any way defective; becauſe before the incloſure, the people uſed, when the way was bad, to go for their better paſſage, over the fields adjoining, out of the common tract, which liberty is taken away by the incloſure. 1 *Haw.* 202.

And if the way is not ſufficient, any paſſenger may break down the incloſure, and go over the land, and juſtify it, till a ſufficient way is made. 3 *Salk.* 182.

Alſo it hath been holden, if one incloſe land on one ſide, which hath been antiently incloſed of the other ſide, he ought to repair all the way; but if there be not ſuch an antient incloſure of the other ſide, he ought to repair but half that way; and it is ſaid, that wherever one is bound to repair a highway, in reſpect of an incloſure, and lays it open again as it was before, he ſhall be freed from the charge of repairing it. 1 *Haw.* 202.

Repairing by preſcription.

3. A particular perſon may be bound to repair a highway, in reſpect of a preſcription; and it is ſaid, that a corporation aggregate may be compelled to do it, by force of a general preſcription, that it ought and hath uſed to do it, without ſhewing that it uſed to do ſo in reſpect of the tenure of certain lands, or for any other conſideration; becauſe ſuch a corporation in judgment of law never dies, and therefore if it were ever bound to ſuch a duty, it muſt needs continue to be always ſo; neither is it any plea, that ſuch corporation hath always done it out of charity, for what it hath always done, it ſhall be preſumed to have been always bound to do: but it is ſaid, that a perſon cannot be charged with ſuch a duty, by a general preſcription from what his anceſtors have done, unleſs it be for ſome ſpecial reaſon, as the having land deſcended from ſuch anceſtors, which are holden by ſuch like ſervice. 1 *Haw.* 202.

Yet it ſeems, that an indictment charging a tenant in fee ſimple, with having uſed of right to repair ſuch a way by reaſon of the tenure of his land, is certain enough, without adding, that his anceſtors or thoſe whoſe eſtate he hath, have always ſo done; for that is implied. 1 *Haw.* 203.

But the indictment muſt ſet forth, where thoſe lands lie. 2 *H. H.* 181.

Charities given or repairing.

4. The ſurveyor ſhall from time to time give information upon oath to the juſtices or two of them, of all ſuch highways, and of all bridges, cauſways, and pave-

ments

ments upon ſuch highways as are out of repair, and ought to be repaired by any perſon or perſons, bodies politick or corporate, by reaſon of any grant, tenure, limitation or appointment of any charitable gift; and the ſaid juſtices ſhall limit a time for repairing the ſame; of which, notice ſhall be given by the ſurveyor to the occupier or occupiers of the lands or tenements liable to ſuch repairs, or to ſuch other perſon or perſons, bodies politick or corporate, as are chargeable with the ſame: And if ſuch repairs ſhall not be effectually made within the time ſo limited; the ſaid juſtices ſhall preſent ſuch highways ſo out of repair, together with the perſon or perſons, bodies politick or corporate, liable to repair the ſame, at the next general quarter ſeſſions for the place where ſuch highway ſhall lie: And the juſtices there, if they ſee cauſe, may direct the proſecution to be carried on at the general expence of ſuch county, city, precinct, or liberty, and to be paid out of the general rates within ſuch juriſdiction. 7 *G.* 3. *c.* 42. *ſ.* 14.

And where any lands have been or ſhall be given for the maintenance of cauſways, pavements, highways, and bridges; the perſons enfeoffed or truſted therewith ſhall let them to farm at the moſt improved yearly value, without fine. And the juſtices in their open ſeſſions ſhall inquire, by ſuch ways and means as they ſhall think fitting, into the value of ſuch lands; and order the improvement and employment of the rents and profits thereof, according to the direction of the donor, if they find that the perſons ſo intruſted have been negligent or faulty in the performance of their truſt. Except ſuch lands as have been given for the uſes aforeſaid to any college or hall in either of the univerſities of this kingdom, which have viſitors of their own. *ſ.* 33.

5. The ſurveyor, together with the inhabitants and occupiers of lands, tenements, and hereditaments, within each pariſh, townſhip, or place, ſhall at proper ſeaſons in every year uſe their endeavours for the repairing of the highways, and ſhall be chargeable thereunto as followeth; viz. Proportion of labour.

Every perſon keeping a *team*, *draught* or *plough*, in ſuch pariſh, townſhip, or place, ſhall, ſix days in every year, to be computed from Michaelmas to Michaelmas, find and ſend on every day and at every place to be appointed by the ſurveyor, one wain, cart, or carriage, furniſhed after the cuſtom of the country, with oxen, horſes, or other cattle, and all other neceſſaries meet to

carry things convenient for that purpoſe, and alſo two able men with each wain, cart, or carriage reſpectively:

And every perſon occupying lands, tenements, or hereditaments of the yearly value of *fifty pounds* or above, ſhall in like manner ſend one wain, cart, or carriage, furniſhed with not leſs than three horſes, or four oxen and one horſe, or two oxen and two horſes, and two able men to each wain, cart or carriage (except in thoſe parts of this kingdom where carts with ſingle horſes are generally uſed; and in ſuch places, every ſuch perſon ſhall in like manner ſend two carts, with one horſe and one able man to each cart); and in like manner for every fifty pounds a year reſpectively, which he, ſhe, or they ſhall ſo occupy in ſuch pariſh, townſhip, or place; and ſhall likewiſe find and ſend one ſufficient labourer for every 10 l. a year which he, ſhe or they ſhall occupy above 50 l. and under 100 l.; and ſo for every 10 l. that each progreſſive and intermediate annual value of 10 l. ſhall fall ſhort of the further increaſe of 50 l.

And every perſon occupying lands, tenements, or hereditaments, in any pariſh, townſhip, or place, of the yearly value of *ten pounds and under fifty pounds*, who ſhall not keep ſuch team, draught, or plough, ſhall find and ſend one ſufficient labourer for every 10 l. a year, which he, ſhe, or they ſhall ſo occupy:

And every perſon, not keeping a team, draught, or plough, but occupying lands, tenements, or hereditaments *under the yearly value of ten pounds* in every pariſh, townſhip, or place; and alſo *every man inhabiting therein* reſpectively, and being *of the age of* 18 *and under* 65, not being an appentice or menial ſervant, nor having performed the ſaid duty or paid compoſition for the ſame in any other place for that year, ſhall by themſelves or one ſufficient labourer for every of them, upon every of the ſaid days, work and labour in the amendment of the ſaid highways, as they ſhall be directed by the ſurveyor:

And if any of the ſaid carriages ſhall not be thought needful by the ſurveyor, on any of the ſaid days; then, every ſuch perſon, who ſhould have ſent and found any ſuch carriage, ſhall, according to the notice to be given to him by the ſurveyor, ſend for every carriage ſo ſpared three able men, or pay to the ſurveyor 4 s. 6 d. in lieu thereof. 7 *G.* 3. *c.* 42. *ſ.* 23.

Provided, that nothing herein ſhall extend to oblige any perſon keeping a team, draught, or plough, and not occupying

occupying lands, tenements, or hereditaments above the yearly value of 50 l. to find and ſend, or compound for, more than one wain, cart or carriage, with men to attend the ſame, in manner as above directed. *ſ.* 27.

And if any perſon ſhall keep a team, draught, or plough, or any part thereof, for part of the year in one pariſh, townſhip, or place, and for part of the year in another; the duty ſhall be performed by ſuch team, draught, or plough, in the pariſh, townſhip, or place, where ſuch perſon ſhall uſually reſide. *ſ.* 27.

Every perſon] It hath been holden that perſons in *holy orders* are within the purview of the ſtatutes for the highways, in reſpect of their ſpiritual poſſeſſions, as much as any other perſons in reſpect of any other poſſeſſions; for the words are general, and there is no kind of intimation that any particular perſons ſhall be exempted more than others. 1 *Haw.* 204.

Alſo *women*, occupying lands as above, are required to ſend carriages and men reſpectively, by virtue of the expreſs words *he ſhe, or they.*

But by the 2 *G.* 3. *c.* 20. No ſerjeant or private man, ſerving in the *militia*, either for himſelf or as a ſubſtitute, ſhall, during the time of ſuch ſervice, be liable to do any highway duty, commonly called ſtatute work. *ſ.* 76.

V. Compoſition inſtead of labour.

Any perſon, liable to perform the ſaid duty, by ſending a wain, cart or carriage, with men, horſes, or oxen, in manner aforeſaid, may compound for the ſame, if he, ſhe, or they ſhall think fit, by paying to the ſurveyor, two days before the firſt day on which the duty ſhall by notice from the ſurveyor be required to be performed, ſuch ſum as the juſtices at their ſaid ſpecial ſeſſions to be held on the firſt Monday in October or within 15 days after in every year, ſhall adjudge and declare to be reaſonable, not exceeding 6 s. nor leſs than 3 s. for each day; and in default of their adjudging and declaring the ſame, the ſum of 4 s. 6 d.; for and in lieu of every ſuch day's duty. And any perſon liable to ſend a labourer or labourers, in reſpect of his or her occupying lands, tenements, or hereditaments of the yearly value of 10 l. or upwards, by ſuch progreſſion as aforeſaid, may compound for the ſame, if he or ſhe ſhall think fit, by paying to the ſurveyor for every 10 l. a year the ſum of 8 d.

And every houſeholder or other perſon, occupying lands, tenements, or hereditaments, under the yearly value of 10 l. and above 3 l. may compound for the ſame, if he or ſhe ſhall think fit, by paying to the ſurveyor the ſum of 6 d. And every other inhabitant, liable to perform ſuch duty or labour, may compound for the ſame, if he or ſhe ſhall think fit, by paying to the ſurveyor the ſum of 4 d. in lieu of every ſuch day's duty or labour, at leaſt two days before the firſt day on which ſuch duty or labour ſhall by ſuch notice be required to be performed. 7 G. 3. c. 42. ſ. 25.

Provided, that the ſurveyor of every pariſh, townſhip, or place, where the number of inhabitants liable to perform ſuch duty ſhall conſiſt of 200 perſons or upwards, ſhall on the firſt or ſecond Sunday in January every year, cauſe ten days notice at leaſt to be given in the church or chapel of ſuch pariſh, townſhip, or place, of the time and place when and where the perſons inclined to compound for the ſaid duty may pay their compoſition money; and in ſuch places no compoſition ſhall be permitted, unleſs the ſame ſhall be paid at the day, or within the time, to be expreſſed in ſuch notice. But in caſes where the occupation of any lands, tenements, or hereditaments ſhall be changed, or any new occupant or inhabitant ſhall come to reſide after the time appointed for ſuch payment; then ſuch new occupants or inhabitants ſhall be allowed to compound, provided they pay the compoſition money to the ſurveyor within 14 days after they ſhall enter or come to reſide. ſ. 26.

And whereas by ſeveral acts of parliament concerning turnpike roads, a certain part of the ſtatute duty is or may be directed to be performed on ſuch roads; and it may happen in ſome places that the ſeveral perſons liable thereto may have compounded for the ſame: in ſuch caſe, the ſurveyor of the highways of the pariſh, townſhip, or place, where ſuch compoſition ſhall have been made, ſhall pay to the treaſurer or ſurveyor of ſuch turnpike roads a proportionable part of the compoſition money ſo received, according to the number of days duty which ſuch perſons were liable to perform on ſuch turnpike roads. ſ. 28.

VI. Working.

The juſtices, at any ſpecial ſeſſions, may by writing under their hands and ſeals, order thoſe roads which do moſt

moſt want repair to be firſt amended, and at what time or in what manner the ſame ſhall be performed. 7 G. 3. c. 42. ſ. 16. If the juſtices make no ſuch order, then the ſurveyor ſhall have the like power of direction.

And the ſurveyor ſhall from time to time give to, or cauſe to be left at the houſe or uſual place of abode of every perſon liable to perform ſuch duty or labour, four days notice at the leaſt, of the day, hour, and place, upon which each of the ſaid days duty ſhall be required to be performed; and ſhall fairly and equally demand and require ſuch duty and labour, from every perſon liable, without favour or partiality. ſ. 24.

And all ſuch perſons as aforeſaid ſhall reſpectively have and bring with them ſuch ſhovels, ſpades, picks, mattocks, and other tools and inſtruments, as are uſeful and proper for the purpoſe. And all the ſaid perſons and carriages ſhall diligently perform the work to which they ſhall be appointed by the ſurveyor, for eight hours in every of the ſaid days, within ſuch pariſh, townſhip, or place, or in getting and carrying materials in and from any other pariſh, townſhip, or place, to be employed in the repair of the highways of the pariſh, townſhip or place, for which they ſhall be required to perform ſuch duty and labour. ſ. 23.

And every perſon making default in finding and ſending each wain, cart, or carriage furniſhed as aforeſaid, and ſuch able men with the ſame, or in performing the ſaid duty at the time and place and in the manner before directed, or in paying the compoſition for the ſame as aforeſaid; ſhall forfeit 10 s. And every perſon making default in ſending any ſuch labourer or in performing ſuch labour, at the time and place and in the manner before directed, or in paying ſuch compoſition money for the ſame as aforeſaid; ſhall forfeit 1 s. 6 d. And the ſurveyor ſhall, within 21 days after ſuch default made, proceed for the recovery of the penalty or forfeiture. (C. D. E.) ſ. 24.

VII. Materials how to be procured.

Rubbiſh of quarries; materials in waſtes or commons; gathering looſe ſtones.

1. It ſhall be lawful for the ſurveyor, to take and carry away, or cauſe to be taken and carried away, ſo much of the *rubbiſh or refuſe ſtones* of any quarry within the pariſh, townſhip, or place where he ſhall be ſurveyor (except ſuch as ſhall ſhall have been got by the ſurveyor of any turnpike road), without the licence of the owner, as he

he ſhall judge neceſſary for the amendment of the ſaid highways; but not to dig or get ſtone in ſuch quarry without leave of the owner thereof;

And alſo it ſhall be lawful for ſuch ſurveyor, for the uſe aforeſaid, in any *common or waſte ground, river or brook* therein, within the pariſh, townſhip, or place where he ſhall be ſurveyor, or within any other pariſh, townſhip, or place, wherein gravel, ſand, chalk, ſtone, or other materials are likely to be found, to ſearch for, dig, and get the ſame; ſo as not thereby to prejudice or damage any building, highway, or ford, nor dig or get the ſame out of any river or brook within the diſtance of 100 feet above or below any bridge, nor within the like diſtance of any pond, dam, or wear:

And likewiſe to *gather ſtones* lying upon any lands or grounds within the pariſh, townſhip, or place, where ſuch highway ſhall be, for ſuch ſervice and purpoſe:

And to take and carry away ſo much of the ſaid materials, as by the diſcretion of the ſaid ſurveyor ſhall be thought neceſſary to be employed in the amendment of the ſaid highways, without making any ſatisfaction for the ſame. 7 *G.* 3. *c.* 42. *ſ.* 19.

Materials in private grounds.

2. And alſo it ſhall be lawful for the ſurveyor, for the uſe aforeſaid, to ſearch for, dig, get, and carry away, ſand, gravel, chalk, ſtone, or other materials (if ſufficient cannot conveniently be had within ſuch commons or waſte lands) in any of the ſeveral or incloſed lands of any perſon whomſoever, within the pariſh townſhip, or place, for which he ſhall be ſurveyor (not being a garden, yard, avenue to an houſe, lawn, park, paddock, or incloſed plantation); making ſatisfaction for the damage to be done to ſuch lands by the getting and carrying away the ſame, as ſhall be agreed upon between him and the owner, occupier, or other perſon intereſted, in the preſence and with the approbation of two or more ſubſtantial inhabitants of ſuch pariſh, townſhip, or place; and if they cannot agree, then ſuch ſatisfaction and recompence ſhall be ſettled and aſcertained by one juſtice. 7 *G.* 2. *c.* 42. *ſ.* 20.

And for reimburſing the expences thereof, upon application made by ſuch ſurveyor to the juſtices at their ſpecial ſeſſions, and oath made of the ſum by him *bona fide* expended for the purpoſe aforeſaid, the ſaid juſtices or any two of them ſhall by their warrant cauſe an equal rate to be made after the manner preſcribed by the 43 *Eliz.* for relief of the poor; which rate, being con-

firmed and allowed by the ſaid juſtices, ſhall be collected by the ſurveyor; and if any refuſe to pay, the ſame ſhall be levied by the ſaid ſurveyor by diſtreſs. *ſ.* 21.

Filling up pits or holes.

3. If any ſurveyor or perſon employed by him ſhall, by reaſon of the ſearching for, digging, or getting any gravel, ſand, ſtones, chalk, or other materials, make or cauſe to be made any pit or hole, in any ſuch lands, rivers, or brooks as aforeſaid, wherein ſuch materials ſhall be found; ſuch ſurveyor or perſon ſhall forthwith cauſe the ſame to be ſufficiently fenced off, and ſuch fence ſupported and repaired during ſuch time as the ſaid pit or hole ſhall continue open: And ſhall, within 3 days after any ſuch pit or hole ſhall be made, where no gravel, ſtone, or materials ſhall be found, cauſe the ſame to be forthwith filled up and levelled: And where any ſuch materials ſhall be found, he ſhall, within 14 days after having dug up ſufficient materials in ſuch pit or hole, cauſe the ſame to be filled up, ſloped down, or fenced off, and ſo continued. *ſ.* 22.

And if ſuch ſurveyor or other perſon ſhall neglect to fill up, ſlope down, or fence off ſuch pit or hole in manner and within the time aforeſaid; he ſhall forfeit 10*s.* for every ſuch default: And if he ſhall neglect to fence off ſuch pit or hole, or to ſlope down the ſame as aforeſaid, for 10 days after he ſhall have received notice for either of thoſe purpoſes from a juſtice, or from the owner or occupier of ſuch ſeveral ground, river, or brook, or any perſon having right of common within ſuch common or waſte lands as aforeſaid, and ſuch neglect and notice ſhall be proved upon oath before one juſtice; he ſhall forfeit not exceeding 10*l.* nor leſs than 40*s*: to be laid out in the fencing off, filling up, or ſloping down ſuch pit or hole, and toward the repair of the roads, as the ſaid juſtices ſhall appoint. *id.*

VIII. Removing obſtructions and annoyances.

Annoyances in general.

1. There is no doubt, but that all injuries whatſoever to any highway, as by digging a ditch, or making a hedge overthwart it, or laying logs of timber in it, or by doing any other act which will render it leſs commodious to the king's people, are publick nuſances at common law. 1 *Haw.* 212.

And by the common law, any one may abate a nuſance to a highway, and remove the materials, but not convert them to his own uſe. 1 *Haw.* 214.

Alſo

Alſo it ſeemeth, that an heir may be indicted for continuing an incroachment, or other nuſance to a highway, begun by his anceſtor; becauſe ſuch a continuance thereof amounts in the judgment of law to a new nuſance. 1 *Haw.* 214.

To ſuffer the ditches adjoining to a highway to be foul, by reaſon whereof it is impaired, is a nuſance alſo at common law. 1 *Haw.* 212.

And it ſeemeth clear, that it is a nuſance at common law, to ſuffer the boughs of trees growing near the highway, to hang over the road in ſuch a manner, as thereby to incommode the paſſage. 1 *Haw.* 212.

And perhaps it is the better opinion, that he who hath trees next adjoining to the highway, and hanging over it to the annoyance of the people, is bound by the common law to lop the ſame; and it ſeems clear, that any perſon may juſtify the lopping ſuch trees, ſo far as to avoid the nuſance. 1 *Haw.* 213.

A gate erected in a highway, is a common nuſance, becauſe it interrupts the people in that free and open paſſage which they before enjoyed, and were lawfully intitled to; but where ſuch a gate has continued time out of mind, it ſhall be intended, that it was ſet up at firſt by conſent, on a compoſition with the owner of the land on the laying out the road, in which caſe the people had never any right to a freer paſſage than what they ſtill enjoy. 1 *Haw.* 199.

In aid of the common law, the ſeveral following proviſions have been made by ſtatute:

Trees growing in the highway.

2. No tree, buſh, or ſhrub, ſhall be permitted to ſtand or grow in any highway, within the diſtance of 15 feet from the center thereof; but the ſame ſhall be cut down, grubbed up, and carried away, by the owner of the land or ſoil, within ten days after notice given to him or to his ſteward or agent, by the ſurveyor; on pain of 10 s. 7 *G.* 3. *c.* 43. *ſ.* 3.

Hedges, ditches, drains.

3. The poſſeſſors of the land next adjoining to any highway ſhall, from time to time, keep their hedges plaſhed, cut or pruned, right up from the roots, ſo as no tree, buſh, or ſhrub, belonging to ſuch hedge, ſhall ſtand or grow in, nor any bough or branch of any ſuch tree (except of timber trees, and trees not being pollards) be ſuffered to hang over, any highway, not being 30 foot broad: And ditches, drains, or water-courſes, of a ſufficient depth and breadth for keeping the highways dry and conveying the water from the ſame, ſhall be made, ſcoured, cleanſed, and kept open, and ſufficient trunks, tunnels,

tunnels, platts, or bridges ſhall be made and laid where any cartways lead out of the ſaid highways into the lands adjoining, by the occupier of ſuch lands: And every perſon who ſhall occupy any lands adjoining to or lying near ſuch highways, thro' which the water hath uſed to paſs from the ſaid highway, ſhall, as often as occaſion ſhall be, open, cleanſe, and ſcour the ditches, water-courſes, or drains, for ſuch water to paſs without obſtruction: And every perſon making default in any of the matters or things aforeſaid, after ten days notice given to him by the ſurveyor, ſhall forfeit 10s. 7 G. 3. c. 42. ſ. 4.

4. No perſon ſhall lay in any highway any ſtone, timber, ſtraw, dung, or other matter; and no perſon, making, ſcouring, or cleanſing ſuch ditches or water-courſes, ſhall permit the ſoil or earth dug out of ſuch ditches, drains, or water-courſes, to remain in ſuch highway, ſo as to obſtruct or prejudice the ſame, for ten days; on pain, in either of the ſaid caſes, of forfeiting 10s. 7 G. 3. c. 42. ſ. 5. Straw, dung, or other matter laid in the highway.

And if any ſtone, or any hay, ſtraw, ſtubble, or other matter, for the making of manure, or on any other pretence whatſoever, not tolerated by this act, ſhall be laid in any highway, within the diſtance of 15 feet from the center thereof, whereby the ſame ſhall be any way obſtructed or annoyed; it ſhall be lawful for the owner or poſſeſſor of the lands adjacent, or any other perſon, to clear the highway by removing ſuch obſtruction, and to take the ſame to his own uſe. ſ. 6.

5. The ſurveyor ſhall, at ſuch times as he ſhall judge proper, view all the roads, common highways, trunks, tunnels, platts, bridges, cauſways, and pavements; and if he ſhall obſerve any nuſances, incroachments, obſtructions, or annoyances, he ſhall, as ſoon as conveniently may be, give or cauſe to be given, to any perſon doing, committing, or permitting the ſame, perſonal notice, or notice in writing to be left at his or her uſual place of abode, ſpecifying the particulars. And if ſuch nuſances, obſtructions, or annoyances ſhall not be removed, and the ditches, drains, gutters, and water-courſes aforeſaid effectually made, ſcoured, cleanſed, and opened, and ſuch trunks, tunnels, platts, or bridges, made and laid, and ſuch hedges properly cut and pruned, within 20 days after ſuch notice given; the ſurveyor ſhall, within 20 days afterwards, do the ſame: And the perſon neglecting to make or open and cleanſe ſuch ditches, gutters, or water- Surveyor. to give notice, and cauſe defects to be amended.

water-courſes, or to cut or prune ſuch hedges, during the time aforeſaid after ſuch notice, ſhall forfeit, for every foot in length which ſhall be ſo neglected, the ſum of 1 d; and the ſurveyor ſhall be re-imburſed what charges he ſhall be at in removing ſuch nuſances, obſtructions, or annoyances, and making or opening, cleanſing and ſcouring ſuch ditches, gutters, and water-courſes, and in making or amending ſuch trunks, tunnels, platts, or bridges, and in cutting and pruning ſuch hedges reſpectively, by the perſon who ought to have done the ſame, over and above the ſaid forfeiture. And if ſuch perſon ſhall, upon demand, refuſe or neglect to pay to the ſaid ſurveyor his charges occaſioned thereby; the ſaid ſurveyor ſhall apply to a juſtice, and on making oath before him of notice being given to the defaulter in manner aforeſaid, and of the ſaid work being done by ſuch ſurveyor, and of the expences attending the ſame; the ſaid ſurveyor ſhall be repaid by ſuch perſon all ſuch his ſaid charges as ſhall be allowed to be reaſonable by the ſaid juſtice; or in default of payment thereof upon demand, the ſame ſhall be levied as other penalties and forfeitures are directed to be levied by this act. 7 *G.* 3. *c.* 42. *ſ.* 8.

Seaſon of cutting hedges or timber.

6. Provided, that no perſon be compelled, nor any ſurveyor permitted, to cut or prune any hedge at any other time than between the laſt day of September and the laſt day of February; and that no perſon ſhall be obliged to ſell any timber trees growing in hedges, at any time whatſoever, except where the highways ſhall be ordered to be inlarged as herein after directed; or to cut down or grub up any oak trees growing within ſuch highway, or in ſuch hedges, except in the months of April, May, June, or July; or any aſh, elm, or other trees, in any other months than December, January, or February. 7 *G.* 3. *c.* 42. *ſ.* 3.

New gutters or drains may be made.

7. Where the ditches, gutters, or water-courſes, which have been uſually made, or which are herein before directed to be made, cleanſed, and kept open, ſhall not be ſufficient to carry off the water which ſhall lie upon and annoy the highways; in ſuch caſe, it ſhall be lawful for the ſurveyor (by order of one juſtice) to make new ditches and drains in and thro' the aforeſaid lands adjoining or lying near to ſuch highway, or in and thro' any other lands, if it ſhall be neceſſary, for the more eaſy and effectually carrying off ſuch water from the ſaid highways, and to keep ſuch ditches, gutters, or water-courſes ſcoured, cleanſed, and opened; and the ſaid

ſurveyor

ſurveyor and his workmen may go upon the lands for that purpoſe. Provided, that the ſaid ſurveyor make proper trunks tunnels, platts, bridges, or arches, over ſuch ditches, gutters or water-courſes, where the ſame ſhall be neceſſary, for the convenient uſe and enjoyment of the lands or grounds thro' which the ſame ſhall be made, and from time to time keep the ſame in repair, and alſo make ſatisfaction to the owner or occupier of ſuch lands which are not waſte or common, for the damages which he ſhall ſuſtain thereby, to be ſettled and paid in ſuch manner as the damages for getting materials in ſeveral or incloſed lands are herein before directed to be ſettled and paid (that is, after the manner of the poor rate, as by the ſtatute of the 43 *Eliz.*) 7 *G.* 3. *c.* 42. *ſ.* 10.

Carriages or implements of huſbandry left in the highway.

8. If any perſon ſhall wilfully ſet, place, or leave any waggon, cart, or any other carriage, or any plough or inſtrument of huſbandry, in the highway (except only with reſpect to ſuch carriage during ſuch reaſonable time as the ſame ſhall be loading or unloading), ſo as to interrupt or hinder the free paſſage of any other carriage, or of his majeſty's ſubjects; he ſhall forfeit 10 s. 7 *G.* 3. *c.* 42. *ſ.* 7.

Drivers of carriages miſbehaving.

9. By the 1 *G. ſt.* 2. *c.* 57. If any perſon driving any cart, dray, or waggon, in the ſtreets of *London*, ſhall ride upon the ſame, not having ſome other perſon on foot to guide the ſame; he ſhall on conviction before the alderman of the ward, or juſtice of the peace, on oath of one witneſs, forfeit 10 s. by diſtreſs and ſale; half to the informer, and half to the poor; and in default of payment, to be ſent to the houſe of correction for three days. *ſ.* 8.

And by the 24 *G.* 2. *c.* 43. If any carter, drayman, carman, waggoner, or other driver ſhall ride upon the ſame in *London* or within ten miles thereof, not having ſome other perſon on foot to guide the ſame, he ſhall on the like conviction, forfeit 10 s. in caſe ſuch driver ſhall not be the owner of ſuch carriage; and in caſe he be the owner, then any ſum not exceeding 20 s. To be recovered, levied, and applied, as by the aforeſaid act of the 1 *G. ſt.* 2. *c.* 57. And any perſon, though not a peace officer, may ſtop and apprehend ſuch offender, and carry him as ſoon as conveniently may be before a juſtice; and if any perſon ſhall reſiſt, abuſe, or prevent any perſon indeavouring to apprehend ſuch offender, or when he is apprehended, ſhall reſcue, or indeavour to reſcue him, he ſhall forfeit 20 s. in like manner. *ſ.* 8, 9.

By

By the 30 *G.* 2. *c.* 22. If the driver of any carriage within *London* or *Weſtminſter*, or in any publick ſtreet or common highway within the bills, ſhall by negligence or wilful miſbehaviour, interrupt the free paſſage of his majeſty's ſubjects; he ſhall, on conviction by confeſſion or oath of one witneſs, before one juſtice forfeit any ſum not exceeding 20s. or be committed to the houſe of correction, or ſome other priſon of the place where the offence ſhall have been committed, or the offender ſhall have been apprehended, to be kept to hard labour for any time not exceeding one calendar month. The ſaid forfeiture to be levied by diſtreſs by warrant of ſuch juſtice; and to be half to the proſecutor, and half to the overſeers for the uſe of the poor of the pariſh or place where the offence ſhall be committed, or the offender ſhall be apprehended; and if there be no overſeer, then to ſome other officer for the uſe of the poor as aforeſaid. *ſ.* 7, 12.

And any perſon, who ſhall ſee any offence committed againſt this act, may by authority of this act and without any other warrant apprehend the offender, and ſhall with all convenient ſpeed convey or deliver him to a conſtable or other peace officer of the place where the offence ſhall be committed or the offender ſhall be apprehended, in order to be conveyed before a juſtice, there to be dealt with according to law. *ſ.* 13.

And if he ſhall refuſe to diſcover his name and place of abode, to the juſtice before whom he ſhall be brought; he ſhall be immediately delivered over to a conſtable or other peace officer, and ſhall by him be conveyed to the common gaol or houſe of correction of the place where the offence ſhall be committed, there to remain until he ſhall declare his name and place of abode to the ſaid juſtice, or to ſome other juſtice of ſuch place. *ſ.* 11.

And any perſon ſhall be admitted to be an evidence, notwithſtanding his being an inhabitant of the place where the offence ſhall be committed. *ſ.* 14.

Provided, that perſons puniſhed by this act ſhall not be puniſhed by any former law. *ſ.* 15.

And, generally, by the 7 *G.* 3. *c.* 42. Whereas many bad accidents happen, and great miſchiefs are frequently done, upon the ſtreets and highways, by the negligence or wilful miſbehaviour of perſons driving carriages thereon; it is enacted, that if the driver of any cart, car, dray, or waggon, ſhall ride upon any ſuch carriage in any ſtreet or highway, not having ſome other perſon on

foot or on horſeback to guide the ſame (ſuch carriages as are reſpectively drawn by one horſe only, or by two horſes abreaſt, and are conducted by ſome perſon holding the reins of ſuch horſe or horſes, excepted); or if the driver of any carriage whatſoever, on any part of any ſtreet or highway, ſhall, by negligence or wilful miſbehaviour, cauſe any hurt or damage to any perſon or carriage paſſing or being on ſuch ſtreet or highway; or ſhall, by negligence or wilful miſbehaviour, prevent, hinder, or interrupt the free paſſage of any other carriage, or of his majeſty's ſubjects, on the ſaid highways; or if the driver of any empty or unloaded waggon, cart, or other carriage, ſhall refuſe or neglect to turn aſide and make way for any coach, chariot, chaiſe, loaded waggon, cart, or other loaded carriage: he ſhall, on conviction by confeſſion or oath of one witneſs before one juſtice where the offence ſhall be committed, forfeit not exceeding 10s; in caſe ſuch driver ſhall not be the owner of ſuch carriage; and if he be the owner, then any ſum not exceeding 20s; or ſhall be committed to the houſe of correction, for any time not exceeding one month, at the diſcretion of ſuch juſtice. And every ſuch driver may, by authority of this act, and without any other warrant, be apprehended by any perſon who ſhall ſee ſuch offence committed, and ſhall be immediately conveyed or delivered to a conſtable or other peace officer in order to be conveyed before a juſtice, to be dealt with according to law. *ſ.* 43. [Note, there are proviſions made to the like purpoſes, by a clauſe in the 27 *G.* 2. *c.* 16. *ſ.* 7. which being in effect ſuperſeded by this preſent act, are therefore here omitted. And it ſeemeth to have happened only by an overſight, that the ſaid clauſe was not repealed amongſt the other repeals in this act.]

IX. Direction poſts to be ſet up.

The juſtices at their ſpecial ſeſſions ſhall iſſue their precept to the ſurveyors, where ſeveral highways meet, and where there is no proper or ſufficient direction poſt or ſtone already fixed or erected, requiring them forthwith to cauſe to be erected or fixed, in the moſt convenient place where ſuch ways meet, a ſtone or poſt, with an inſcription thereon, in large legible letters, containing the name or names of the next market town or towns, or other conſiderable place to which the ſaid highways

lead; and alſo, at the ſeveral approaches or entrances to ſuch parts of any highways as are ſubject to deep or dangerous floods, graduated ſtones or poſts, denoting the depth of water in the deepeſt part of the ſame; and likewiſe ſuch direction poſts or ſtones, as the ſaid juſtices ſhall judge to be neceſſary, for the guiding of travellers in the beſt and ſafeſt tract thro' the ſaid floods or waters. The ſaid ſurveyors to be reimburſed by an aſſeſſment ordered by the juſtices at their ſpecial ſeſſions in manner of the poor rate, in like ſort as for purchaſing materials as abovementioned. 7 *G.* 3. *c.* 42. *ſ.* 18, 21.

And if any ſurveyor ſhall, by the ſpace of 3 months after ſuch precept to him delivered, neglect or refuſe to cauſe any ſuch ſtone or poſt to be fixed as aforeſaid; he ſhall forfeit 20 s. *ſ.* 18.

X. Penalty of deſtroying blocks, poſts, or battlements of bridges.

Whereas in ſome places it may be neceſſary to ſecure horſe and foot cauſeways, by poſts, blocks, or great ſtones, fixed in the ground, or by banks of earth caſt up, or otherwiſe, from being broken up and ſpoiled with carriages; and foraſmuch as divers evil diſpoſed perſons do wilfully or wantonly pull up, cut down, and remove the ſaid poſts, blocks, and great ſtones ſo fixed as aforeſaid, and alſo dig and caſt down the ſaid banks, whereby the ſaid cauſeways are often ruined and deſtroyed; and ſuch evil diſpoſed perſons may break, damage, or throw down the ſtones, bricks, or wood, fixed upon the parapets or battlements of bridges; and may pull down, deſtroy, obliterate, or deface any mile ſtone, or poſt graduated, or direction poſt or ſtone, erected or to be erected upon any highway: For prevention thereof, it is enacted, that every perſon who ſhall be guilty of any ſuch offence, ſhall, upon complaint thereof made to one juſtice of the place where the ſame ſhall be proved to be done, by the oath of one witneſs, or upon view of the juſtice, forfeit not exceeding 5 l. nor leſs than 10 s. or be committed to the houſe of correction, there to be whipped and kept to hard labour for any time not exceeding one calendar month nor leſs than ſeven days, at the diſcretion of ſuch juſtice. 7 *G.* 3. *c.* 42. *ſ.* 34.

XI. Breadth

XI. Breadth of wheels, and number of horſes.

Whereas the highways, not being turnpike roads, are much prejudiced by the narrowneſs of the wheels of the ſeveral carriages travelling thereon, and by the exceſſive burdens loaded in ſuch carriages; it is enacted, that no waggon, having the ſole or bottom of the fellies of the wheels of leſs breadth than 9 inches, ſhall go or be drawn with more than 6 horſes; and no cart, having the ſole or bottom of the fellies of the wheels of leſs breadth than 9 inches, ſhall go or be drawn with more than 4 horſes; and no waggon having the ſole or bottom of the fellies of the wheels of the breadth of 9 inches, ſhall go or be drawn with more than 8 horſes; and no cart, having the ſole or bottom of the fellies of the wheels of the breadth of 9 inches, ſhall go or be drawn with more than 5 horſes; on pain, that the owner or driver ſhall forfeit all the horſes above the number, with all geers, bridles, halters, and accoutrements, to the ſole uſe and benefit of any perſon who ſhall ſeize or diſtrain the ſame. 7 *G.* 3. *c.* 32. *ſ.* 48.

Provided, that the regulations herein before mentioned concerning the number of horſes and the wheels of carriages, ſhall not be conſtrued to extend to carts, waggons, or other carriages, employed only in carrying any one ſtone, block of marble, cable rope, or piece of metal or timber; or to ſuch ammunition as ſhall be for his majeſty's ſervice. 8 *G.* 3. *c.* 5.

Provided alſo, that any perſon who ſhall make ſeizure or diſtreſs, for any of the ſaid forfeitures or penalties, ſhall deliver the horſe, horſes, or other things ſo ſeized or diſtrained, into the cuſtody of the conſtable, headborough, tythingman, or ſome other officer, of the pariſh, townſhip, or place where ſuch diſtreſs or ſeizure is made, or of the next pariſh, townſhip, or place (who ſhall receive into their cuſtody and ſafely keep the ſame) till the perſon who made the ſeizure ſhall make proof upon oath before a juſtice, of the offence committed, which he ſhall make within 6 days after the ſeizure; or, in default thereof, ſuch horſe or other thing ſhall be delivered to the owner, and the perſon making ſuch ſeizure ſhall pay ſuch reaſonable charges to the conſtable or other officer, for the keeping and ſecuring thereof, as the ſaid juſtice ſhall direct. And the juſtice before whom ſuch proof ſhall be made, ſhall iſſue his precept to ſuch conſtable or other officer, immedi-

ately to deliver the horſe, horſes, or other things ſo forfeited, to the party who ſeized the ſame, to and for his own uſe and benefit; paying ſuch reaſonable charges for keeping and ſecuring thereof, as the ſaid juſtice ſhall direct. And every perſon making ſeizure, and not proſecuting within the time and in manner aforeſaid, ſhall forfeit to the owner of ſuch horſe or other thing the ſum of 40 s. *ſ.* 41.

H. 16 *G.* 2. *K.* and *Thomas Sergiſon*, eſquire. An information was moved for againſt him, for not condemning a horſe taken out of a team under the ſtatute of the 5 *G. c.* 12. which required proof to be made before a juſtice, of the cauſe of forfeiture; and the party who ſeized tendring his own oath, the defendant ſcrupled to take it, or to determine the affair in the abſence of the owner or driver. And by the court, they were both reaſonable objections. Why is not the perſon who ſeized, and is to have the benefit of the forfeiture, within the reaſon of excluding informers where there is a penalty? *Making proof* muſt mean *legal proof.* The other alſo is but natural juſtice: There are exceptions as to one ſtone, or one piece of timber, though drawn by ever ſo many horſes; and ought not the owner to have an opportunity of ſhewing it? And the rule was diſcharged with coſts. *Str.* 1181.

And for the better diſcovery of offenders, the owner of every waggon, wain, or cart, ſhall cauſe to be placed, written, or painted, upon ſome conſpicuous part of his waggon, wain, or cart, before he ſhall uſe or drive the ſame on any publick highway, his chriſtian and ſurname, and the place of his abode, in large legible letters, and continue the ſame thereupon, ſo long as ſuch waggon or cart ſhall be uſed upon any ſuch highway. And if any perſon ſhall neglect the ſame, or cauſe to be placed any falſe or fictitious name or place of abode, he ſhall forfeit 20 s. *ſ.* 42.

With reſpect particularly to the cities of London and Weſtminſter and parts adjacent, it is enacted by the 6 *G. c.* 6. that no perſon in London and Weſtminſter, or within 10 miles thereof, ſhall carry at any one load, in waggons or carts having their wheels ſhod with iron, more than 12 ſacks of meal of 5 buſhels each, nor more than 12 quarters of malt, nor more than 700 ½ of bricks, nor more than one chalder of coals; on pain of forfeiting any one of the horſes, with the geers, bridles, and halters

halters therewith uſed, in ſuch manner and to ſuch uſes, as by the 5 *G. c.* 12. (now repealed.)

And by the 18 *G.* 2. *c.* 33. The wheels of every cart, car, or dray, within the bills of mortality, ſhall be ſix inches broad in the felly, and not wrought about with iron, nor be drawn with above the number of three horſes, after they are up the hills from the water ſide; on pain of 40s. by warrant of one juſtice, by diſtreſs; and for want of diſtreſs, or non-payment in ſix days after demand, to be committed till paid: But this not to extend to any country cart or waggon, that ſhall bring any goods, or ſhall carry any goods half a mile beyond the paved ſtreets of the ſaid cities and places.

Alſo any perſon, within the ſaid limits, uſing any cart, car, or dray, having the wheels full ſix inches broad, when worn, may have the ſame bound round with tire of iron, provided it be ſix inches broad, and made flat, and not ſet on with roſe-headed nails.

XII. Widening of highways.

The ſurveyor ſhall make every cartway, leading to any market town, 20 feet wide at the leaſt, if the ground between the fences will admit of it; and where horſe cauſeways are uſed, or ſhall be judged proper, they ſhall not be leſs than 3 feet in breadth. 7 *G.* 3. *c.* 42. *ſ.* 11.

And where it ſhall appear, upon the view of two juſtices, that any highway between the fences is not of ſufficient breadth; they ſhall have power to order the ſame to be widened, in ſuch manner as they ſhall think fit; ſo that the ſaid highway, when widened, ſhall not exceed 30 feet in breadth; and ſo as the ſaid power do not extend to pull down any houſe or building, or to take away the ground of any garden, park, paddock, court, or yard. *ſ.* 12.

And for the ſatisfaction of the perſon or perſons, bodies politick or corporate, who are ſeiſed or poſſeſſed of, or intereſted, in their own right or in truſt for any other, in the ſaid ground that ſhall be laid into the highway; the ſurveyor under the direction and with the approbation of the ſaid juſtices, ſhall have power to make an agreement with them, for the recompence to be made for ſuch ground, and for the making a new ditch and fence on that ſide of the highway which ſhall be ſo widened, in proportion to their ſeveral intereſts; and alſo with

any other perſons who may be injured thereby, for the ſatisfaction to be made to them reſpectively. *id.*

And if the ſurveyor, under the direction and with the approbation of the ſaid juſtices cannot agree with the ſaid perſons, or if they cannot be found, or ſhall refuſe to treat, or to take ſuch recompence as ſhall be offered to them reſpectively by the ſurveyor; then the ſurveyor may apply to the general quarter ſeſſions, giving 6 days notice in writing to ſuch perſon intereſted in the ground, or to his guardian, truſtee, clerk, or agent, ſignifying an intention to apply to ſuch quarter ſeſſions for the purpoſe of taking ſuch ground: And the juſtices there on proof of ſuch notice, and on certificate in writing ſigned by the juſtices making ſuch view as aforeſaid, of their proceedings in the premiſſes, ſhall impanel a jury of 12 diſintereſted men, out of the perſons returned to ſerve as jurymen at ſuch quarter ſeſſions. And the ſaid jury ſhall, upon their oaths, to the beſt of their judgment, aſſeſs the damages to be given, and recompence to be made, to the owners and others intereſted as aforeſaid in the ſaid ground, for their reſpective intereſts, as they ſhall think reaſonable, not exceeding 30 years purchaſe for the clear yearly value of the ground ſo laid out; and likewiſe ſuch recompence as they ſhall think reaſonable, for the making of a new ditch and fence to that ſide of the highway that ſhall be ſo widened; and alſo ſatisfaction to any others, that may be otherwiſe injured thereby. And upon payment or tender of the money ſo to be awarded to the perſons intitled to receive the ſame, or leaving it in the hands of the clerk of the peace, in caſe ſuch perſons cannot be found, or ſhall refuſe to accept the ſame, for the uſe of the owner or of others intereſted in the ſaid ground; the intereſt of ſuch perſons ſhall be deveſted out of them, and the ſame ſhall be eſteemed and taken to be a publick highway to all intents and purpoſes. Saving nevertheleſs to the owner of ſuch ground all mines, minerals, and foſſils, lying under the ſame, which can be got without breaking the ſurface; and alſo all timber and wood growing upon ſuch ground, to be fallen and taken by the owner within one month after ſuch order made, or, in default thereof, to be fallen by the ſurveyor within the reſpective months aforeſaid, and laid upon the land adjoining for the benefit of the owner. *id.*

And in caſe the jury ſhall deliver a verdict for more than hath been offered by the ſurveyor before ſuch application to the quarter ſeſſions; then the coſts and expences attending

attending the ſaid ſeveral proceedings ſhall be born and paid by the ſurveyor, out of the money in his hands, or to be aſſeſſed by virtue of this act: But if the jury ſhall deliver a verdict for no more, or for leſs, than hath been ſo offered by the ſurveyor; then the ſaid coſts and expences ſhall be born and paid by the perſon or perſons who ſo refuſed to accept the ſaid recompence and ſatisfaction. *ſ.* 13.

And where there ſhall not be ſufficient money in the hands of the ſurveyor for the purpoſes aforeſaid; then the ſaid two juſtices, in caſe of agreement, or the ſaid quarter ſeſſions after ſuch verdict as aforeſaid, ſhall order an aſſeſſment to be made, levied, and collected, upon all and every the occupiers of lands, tenements, and hereditaments, in the reſpective places where ſuch highways ſhall lie; which, if not paid within 10 days after demand, ſhall be levied by the ſurveyor by diſtreſs: And the money, when collected, ſhall be employed and accounted for, according to the order of the ſaid juſtices, or court of quarter ſeſſions reſpectively, for the purpoſes aforeſaid. Provided, that no ſuch aſſeſſment to be made in any one year, ſhall exceed the rate of 6d. in the pound, of the yearly value of the lands, tenements, and hereditaments ſo aſſeſſed. *ſ.* 12.

XIII. General aſſeſſment of 6d. *in the pound.*

If upon application of the ſurveyor of any pariſh, townſhip, or place, to the general or quarter ſeſſions (notice being firſt given of ſuch intended application at the church or chapel on ſome ſunday before), the juſtices ſhall be fully ſatisfied by proof upon oath, that the ſtatute duty hath been performed, and the (compoſition) money expended, towards the repair of the highways as aforeſaid; or ſhall be fully ſatisfied, that the common highways, bridges, cauſeways, ſtreets, or pavements, belonging to ſuch pariſh, townſhip, or place, cannot be ſufficiently amended and repaired, paved, cleanſed, and ſupported, by the means herein before preſcribed; in ſuch caſe, an aſſeſſment upon all and every the occupiers of lands, tenements, and hereditaments within ſuch pariſh, townſhip, or place, may be made, levied, and collected by ſuch perſon and perſons, and allowed in ſuch manner, as the ſaid juſtices by their order at ſuch ſeſſions ſhall direct and appoint. And the money thereby raiſed, ſhall be employed and accounted for according to the order of the ſaid juſtices, towards the amending, repairing, paving,

cleanſing, and ſupporting ſuch highways, cauſeways, ſtreets, pavements, and bridges, from time to time, as need ſhall require. Which ſaid aſſeſſment ſhall, by warrant of one juſtice, be levied by diſtreſs, if not paid within 10 days after demand. 7 G. 3. c. 42. ſ. 29.

Provided, that no ſuch aſſeſſment to be made in any one year, ſhall exceed the rate of 6 d. in the pound, of the yearly value of the lands, tenements, and hereditaments ſo aſſeſſed. ſ. 30.

XIV. Penalty of hindring the execution.

If any perſon ſhall reſiſt or make forcible oppoſition againſt any perſon employed in the due execution of this act;—or ſhall hinder or attempt to prevent or obſtruct the ſeizing or diſtraining any horſe hereby directed to be forfeited for the offences herein before mentioned;—or make any reſcue of cattle or other goods diſtrained by virtue of this act;—or if any conſtable, headborough, or tythingman ſhall refuſe or neglect to execute or obey any warrant or precept granted by any juſtice in purſuance of this act;—he ſhall, on conviction before one juſtice, forfeit not exceeding 10l. nor leſs than 40s. to be paid to the ſurveyor where the offence was committed, to be laid out in the repair of the highway. And if he do not forthwith pay, or ſecure to be paid, the ſaid forfeiture upon conviction; it ſhall be lawful for ſuch juſtice to commit him to the common gaol or houſe of correction of the place where the offence was committed, for any time not exceeding 3 months, unleſs the forfeiture be ſooner paid. 7 G. 3. c. 42. ſ. 46.

XV. Penalty of the ſurveyor for neglect of duty.

If any ſurveyor, after acceptance of the office ſhall neglect his duty in any thing required of him by this act, for which no particular penalty is impoſed; he ſhall forfeit, not exceeding 5l. nor leſs than 10s. at the diſcretion of the juſtice or juſtices having juriſdiction therein. 7 G. 3. c. 42. ſ. 35.

And it ſhall be lawful for the ſaid juſtices, or any two or more of them, upon complaint by any perſon upon oath, againſt any ſurveyor, for any neglect or default made in the performance of his duty required by this act, to ſummon the ſurveyor to appear before them, at ſuch time and place as they ſhall appoint by ſuch ſummons;

mons; and then and there to examine and inquire into the ſame upon oath, and to make ſuch order for the inforcing of this act, as to them ſhall ſeem meet. *ſ.* 17.

XVI. Surveyor's account.

The ſurveyor ſhall diligently collect all the rates, forfeitures, penalties, and compoſitions; and ſhall keep a book wherein he ſhall enter an account of all ſuch money as ſhall have come to his hands; and to whom and on what occaſion he hath diſpoſed of the ſame; and ſhall alſo enter in ſuch book a liſt of all ſums then remaining due and owing from any perſon, in reſpect of the payments, compoſitions, rates, aſſeſſments, penalties, or forfeitures; and alſo ſhall enter in the ſaid book an account of all tools, materials, implements, and other things, provided for the repair of the highways, at the publick expence of ſuch pariſh, townſhip, or place; and ſhall, at the aforeſaid ſpecial ſeſſions to be held on the firſt Monday in October or within 15 days after as aforeſaid yearly, produce ſuch book to the juſtices at ſuch ſeſſions, and then and there verify the ſeveral entries therein on oath before the ſaid juſtices; and ſhall then, or within 14 days after ſuch ſeſſions, deliver the ſaid book, together with all ſums remaining in his hands, and likewiſe all tools, materials, implements, and other things as aforeſaid, to his ſucceſſor. And ſuch ſucceſſor ſhall collect all ſuch ſums due and owing as aforeſaid, by all ſuch ways, and means, as the preceding ſurveyor could or ought to have collected and received the ſame. And if ſuch ſurveyor ſhall neglect to provide ſuch book, or to make ſuch entry therein, or to deliver the ſaid book and ſuch tools, materials, implements, and other things as aforeſaid to his ſucceſſor; he ſhall forfeit 5 l: And if he ſhall make default in payment of the money ſo remaining in his hands, within the time, and according to the directions aforeſaid; he ſhall forfeit double the value of ſuch money. 7 *G.* 3. *c.* 42. *ſ.* 32.

And no perſon ſhall receive any fee for ſuch oath or account; on pain of 10 l. *ſ.* 37.

XVII. Pre-

XVII. Preſentment or indictment of highways in general. (F)

Indictment to be within the county.

1. All defects of repairs of highways, ſhall be preſented in the county where they lie, and not elſewhere.

Muſt ſhew it to be a highway.

2. And the indictment muſt ſhew, that the way is common to all the king's people; for which cauſe it hath been reſolved, that an indictment for a nuſance to a horſeway, without adding that it is a highway, is naught. 1 *Haw.* 220.

Muſt ſhew the places from and to which it leads.

3. It is ſafeſt in the indictment to ſhew both the place from which, and alſo the place to which the way ſuppoſed to be out of repair doth lead; yet exceptions for want of ſuch certainty have ſometimes been diſallowed: however it ſeems certain, that there is no neceſſity to ſhew, that a highway leads to a market town, becauſe every highway leads from town to town. 1 *Haw.* 219.

Place where.

4. It is neceſſary in the indictment expreſly to ſhew, in what place the nuſance complained of was done; for which cauſe an indictment for ſtopping a way at *D.* leading from *D.* to *C.* is not good, for it is impoſſible that a way leading from *D.* ſhould be in *D.* and no other place is mentioned. 1 *Haw.* 219.

Need not name the inhabitants.

5. It is ſaid, that a preſentment that a highway in ſuch a place is decayed, by the defaults of the inhabitants of ſuch a town, is good, without naming any perſon in certainty. 1 *Haw.* 220.

Indictment againſt particular perſons.

6. But it hath been adjudged, that an indictment againſt particular perſons, muſt ſpecially charge them every one. 1 *Haw.* 220.

Muſt ſet forth how much is out of repair.

7. It ought alſo certainly to ſhew, to what part of the highway the nuſance did extend, as by ſhewing how many foot in breadth it contained, or otherwiſe the defendant will neither know of the certainty of the charge, againſt which he is to make his defence, neither will the court be able from the record to judge of the greatneſs of the offence, in order to aſſeſs a fine anſwerable thereunto; and it hath been reſolved, that the place is not ſufficiently aſcertained by ſhewing, that it contained ſo many foot in length, and ſo many in breadth, *by eſtimation.* 1 *Haw.* 220.

Muſt ſet forth the fact clearly.

8. Alſo, the fact muſt be expreſſed in ſuch proper terms, that it may clearly appear to the court to have been a nuſance; and for this cauſe it hath been reſolved, that a preſentment for *diverting* a highway is not good, becauſe a highway

highway cannot be diverted, but muſt always continue in the ſame place where it was, howſoever it may be *obſtructed*, and a new way made in another place. 1 *Haw.* 220.

9. It ſeems to be implied in the conſtruction of all penal ſtatutes, that no one ought to be convicted of any offence againſt them without having notice of the accuſation made againſt him, and an opportunity of defending himſelf. And therefore it ſeems certain, that generally no one ought to be puniſhed for any of the abovementioned offences, without being called upon to anſwer for himſelf, and having liberty to traverſe the matters alledged againſt him. 1 *Haw.* 219. Perſons indicted to have notice.

10. Upon an indictment againſt a pariſh for not repairing, they can give nothing in evidence upon the plea of not guilty, but that the way is in repair; but if it be againſt a particular perſon, he may give evidence that others ought to repair it. 3 *Salk.* 183. *Comb.* 396. Plea of not guilty.

11. And the defendants ought not to plead that they ought not to repair, without ſhewing who ought. 1 *Haw.* 220. Plea to charge others.

12. And Mr. *Hawkins* ſays, that if a particular perſon, be bound to repair a highway, either by incloſure or by preſcription, the pariſh cannot take advantage of it upon the plea of not guilty, but ought to ſet forth their diſcharge in a ſpecial plea. 1 *Haw.* 203. Special plea.

13. It is no excuſe for the inhabitants of a pariſh, being indicted at common law, for not repairing the highways, that they have done all that is required of them by ſtatute; for ſince theſe ſtatutes are wholly in the affirmative, and made in aid of the common law, and to ſupply the defects thereof, they ſhall not be conſtrued to abrogate any proviſion thereby made for theſe purpoſes. 1 *Haw.* 204. So that at all events, the pariſh may be compelled to make their ways good. Further proviſion for the ſame by the common law.

14. After conviction, or upon a demurrer, or confeſſion, any one may take exceptions to ſuch indictment or preſentment in any court for the want of legal form; but the court in diſcretion will very rarely ſuffer a man to take ſuch exceptions, before ſuch conviction or confeſſion, without a certificate and affidavit that the ways are in good repair. 1 *Haw.* 219. Exceptions to the form of the indictment.

15. And the defendants ſhall not be diſcharged by ſubmitting to a fine, but a *diſtringas* ſhall go *in infinitum* till they repair. 1 *Haw.* 220. Fine no diſcharge.

XVIII. Pre-

XVIII. Preſentment by a juſtice. (G.)

Every juſtice of aſſize, juſtice of the counties palatine, and of the great ſeſſions in Wales, and juſtice of the peace, ſhall have authority on his own view, and the juſtice of the peace upon information on oath given to him by any ſurveyor, to make preſentment at their reſpective aſſizes, great ſeſſions, or in the open general quarter ſeſſions of the peace, of any highway, cauſeway, or bridge, not well and ſufficiently repaired and amended; or of any other default or offence againſt the proviſion or intent of this ſtatute. 7 *G.* 3. *c.* 42. *ſ.* 15.

And all defects in the repair thereof ſhall be preſented in ſuch juriſdiction where the ſame do lie, and not elſewhere. *id.*

And no ſuch preſentment, nor any indictment for any ſuch default or offence ſhall be removed by certiorari or otherwiſe out of ſuch juriſdiction, till ſuch indictment or preſentment be traverſed and judgment thereupon given; except where the duty or obligation of repairing may come in queſtion. *id.*

And every ſuch preſentment made by any ſuch juſtice of aſſize, counties palatine, great ſeſſions, or of the peace, upon his own view, or upon ſuch information having been given to ſuch juſtice of the peace upon the oath of a ſurveyor as aforeſaid, ſhall be as good, and of the ſame force and effect in law, as if the ſame had been preſented and found by the oaths of 12 men. And for every ſuch default or offence, the court may aſſeſs ſuch fines as to them ſhall ſeem meet. Saving to every perſon affected by ſuch preſentment, his lawful traverſe to the ſame, as well with reſpect to the fact of non-repair, as to the duty or obligation of repairing, as they might have had upon any indictment of the ſame, preſented and found by the grand jury. *id.*

And the juſtices of the peace at their general quarter ſeſſions, or the major part of them (ſuch major part not being leſs than five), may, if they ſee juſt cauſe, direct the proſecution on ſuch preſentments as ſhall be made at the quarter ſeſſions as aforeſaid, to be carried on at the general expence of ſuch county, diviſion, or liberty, and to be paid out of the general rates within ſuch juriſdiction. *id.*

XIX. *Levying and application of fines and forfeitures.*

Levying and application of fines.

1. No fine, iſſue, penalty, or forfeiture, for not repairing the highways, or not appearing to any indictment or preſentment for not repairing the ſame, ſhall be returned into the exchequer or other court; but ſhall be levied by, and paid into the hands of ſuch perſons reſiding in or near the pariſh, townſhip, or place where the road ſhall lie, as the court impoſing the ſame ſhall order and direct, to be applied towards the repair and amendment of ſuch highways. 7 *G.* 3. *c.* 42. *ſ.* 31.

And if any fine, iſſue, penalty, or forfeiture, to be impoſed on any ſuch pariſh, townſhip, or place, for not repairing the highways, or not appearing as aforeſaid, ſhall be levied on any one or more of the inhabitants of ſuch pariſh, townſhip, or place; ſuch inhabitant may make his complaint to the juſtices, at their ſpecial ſeſſions: And the ſaid juſtices, or any two of them, may by their warrant cauſe a rate to be made in like manner as is herein before preſcribed for levying the general aſſeſſment of 6 d. in the pound, for the reimburſing ſuch inhabitant. Which rate ſo made, and confirmed by any two juſtices, ſhall be collected and levied by the ſurveyor; who ſhall, within one month after making and confirming the rate, collect, levy, and pay the ſame to ſuch inhabitant. *id.*

Of forfeitures, before one juſtice.

2. All penalties and forfeitures by this act impoſed, for any offence againſt the ſame, and all coſts and charges to be allowed and ordered by the authority of this act, the manner of levying and recovering of which is not herein otherwiſe particularly directed, ſhall be levied by diſtreſs, by warrant of one juſtice where the offence, neglect, or default ſhall happen, or ſuch order for payment of coſts or charges ſhall be made; which warrant ſuch juſtice ſhall grant, on conviction of the offender by confeſſion or oath of one witneſs, or upon order made as aforeſaid. And the penalties, when ſo levied, ſhall be paid half to the informer, and half to the ſurveyor to be employed towards the repair of the highway, unleſs otherwiſe directed by this act. And if ſuch diſtreſs cannot be found, and ſuch penalties and forfeitures, or the ſaid coſts, and charges, ſhall not be forthwith paid; ſuch juſtice ſhall commit the offender, or perſon liable to pay the ſame reſpectively, to the common gaol or houſe of correction

correction of the place where the offence ſhall be committed or ſuch order as aforeſaid ſhall be made, for any time not exceeding three months, unleſs the ſaid penalty, forfeiture, coſts, or charges ſhall be ſooner paid. And if ſuch offender, or perſon liable or ordered to pay the ſame reſpectively, ſhall live out of the juriſdiction of ſuch juſtice; any juſtice of the place where ſuch perſon ſhall inhabit ſhall, on requeſt to him made, and on a true copy of the conviction whereby ſuch forfeiture or penalty was incurred, or of the order for payment of ſuch coſts or charges, being produced and proved before him by the oath of one witneſs, cauſe by his warrant ſuch penalty or forfeiture, or ſuch coſts and charges, to be levied by diſtreſs; and if no ſufficient diſtreſs can be had, ſhall commit ſuch perſon to the common gaol or houſe of correction of ſuch place, for the time and in the manner aforeſaid. 7 *G.* 3. *c.* 42. *ſ.* 47.

Or by actinn at law.

3. Or, the proſecutor or informer may, if he pleaſes, ſue for and recover any forfeiture or penalty impoſed by this act, by action at law, in any of his majeſty's courts of record, in manner following; that is to ſay, where any perſon ſhall be liable to ſuch pecuniary penalty; the ſame may be ſued for and recovered by action of debt, in which it ſhall be ſufficient to declare, that the defendant is indebted to the plaintiff in the ſum of —— being forfeited by an act paſſed in the 7th year of the reign of his preſent majeſty, intituled, *An act to explain, amend, and reduce into one act of parliament, the ſeveral ſtatutes now in being for the amendment and preſervation of the publick highways of this kingdom; and for other purpoſes therein mentioned:* and where the penalty or forfeiture ſhall be of any horſe or other goods,—by an action of trover, againſt the perſon liable to ſuch penalty or forfeiture, in which the forfeiture ſhall be ſufficient evidence of property to the Plaintiff, and in which the value of ſuch horſe or other goods ſhall be given in damages, without any proof of ſeizure or demand: And the Plaintiff, if he recover, ſhall have double coſts. Provided, that there ſhall not be more than one recovery for the ſame offence; and that ten days notice in writing be given to the Party offending, previous to the commencement of ſuch action; and that the ſame be brought within one calendar month after the offence. 7 *G.* 3. *c.* 42. *ſ.* 48.

Inhabitant may be a witneſs.

4. Provided, that no conviction ſhall be had by virtue of this act, unleſs upon confeſſion of the party accuſed, or oath of one witneſs; and that any inhabitant of any pariſh,

pariſh, townſhip or place, in which the offence ſhall be committed, ſhall be deemed a competent witneſs, notwithſtanding his being ſuch inhabitant. 7 *G.* 3. *c.* 42. *ſ.* 49.

Power to adminiſter an oath.

5. And it ſhall be lawful for any juſtice to adminiſter an oath to any witneſs or other perſon, for the better diſcovering and executing of the ſeveral matters herein before directed to be examined, inquired into, or performed by ſuch juſtice. 7 *G.* 3. *c.* 42. *ſ.* 50.

[In ſeveral acts of late years, giving juriſdiction to juſtices of the peace, this power of adminiſtring an oath is ſpecified; which ſeems to imply, that the legiſlature thought ſuch ſpecial deſignation needful. If it is needful, or if there is a doubt about it, a general clauſe in ſome act of parliament ſeemeth requiſite, to give to the juſtices a power to adminiſter an oath in all caſes whatſoever concerning which they are to inquire, hear and determine; for without this, their juriſdiction muſt needs be extremely defective. If it is clear that they have this power already, ſuch clauſes in acts of parliament are ſuperfluous; and had better be omitted, as tending to unſettle.]

Irregularity in the proceedings.

6. Where any diſtreſs ſhall be made for auy ſum to be levied by virtue of this act, the diſtreſs itſelf ſhall not be deemed unlawful, nor the party making the ſame be deemed a treſpaſſer, for any default or want of form in any proceedings relating thereto; nor ſhall the party diſtraining be deemed a treſpaſſer *ab initio*, on account of any irregularity which ſhall be afterwards done by him; but the perſon aggrieved by ſuch irregularity may recover ſatisfaction for the ſpecial damage in an action on the caſe. 7 *G.* 3. *c.* 42. *ſ.* 51.

Tender of amends.

7. Provided, that no plaintiff ſhall recover in any action for any irregularity, treſpaſs, or wrongful proceedings, if tender of ſufficient amends ſhall be made before the action brought: And in caſe no ſuch tender ſhall have been made, the defendant may by leave of the court, before iſſue joined, pay into court ſuch ſum as he ſhall ſee fit; whereupon ſuch proceedings ſhall be had, as in other actions where the defendant is allowed to pay money into court. 7 *G.* 3. *c.* 42. *ſ.* 52.

XX. Appeal.

If any perſon ſhall think himſelf aggrieved by any thing done in purſuance of this act, for which no particular method of relief hath been already appointed; he may appeal, within 4 months, to the general quarter ſeſſions, giving 8 days notice in writing of his intention to bring ſuch appeal, and of the matter thereof, to the juſtice or other perſon againſt whom the complaint ſhall be made; and within 4 days after ſuch notice, entring into recognizance before a juſtice, with one ſurety, conditioned to try ſuch appeal at, and pay ſuch coſts as ſhall be awarded by the juſtices of ſuch quarter ſeſſions; and every juſtice and other perſon, having received notice of ſuch appeal, ſhall return all proceedings had before them reſpectively touching the matter of ſuch appeal, to the ſaid general quarter ſeſſions, on pain of 5l. And the juſtices there, on proof of ſuch notice, and of the entring into ſuch recognizance, ſhall hear and determine ſuch appeal in a ſummary way, and award ſuch coſts to either party as they ſhall think proper; to be levied and recovered as herein before directed. Which determination ſhall be final and concluſive to all intents and purpoſes. And no proceeding on this act ſhall be quaſhed or vacated for want of form, or removed by certiorari, or any other proceſs, except as herein before mentioned, into any of his majeſty's courts of record at *Weſtminſter*. 7 *G.* 3. *c.* 42. *ſ.* 53.

Provided, that no ſuch appeal ſhall be made againſt any conviction for the forfeiture of any horſe or other beaſt by virtue of this act, unleſs the perſon convicted ſhall at the time of the conviction, give notice of his intention to appeal, and at the ſame time enter into recognizance with ſufficient ſureties to pay the value of ſuch horſe or other beaſt, in caſe the conviction ſhall be affirmed upon appeal: and on his giving ſuch ſecurity, ſuch horſe or other beaſt ſhall be forthwith delivered to him. *ſ.* 54.

Horſe or other beaſt] *Beaſt* is not mentioned before, but *horſes* only. And by this it may ſeem, that the omitting the mention of *oxen or other beaſts of draught* hath been an overſight. For as the act ſtands, a man may paſs with as many oxen in a draught as he pleaſes.

XXI. Limi-

XXI. Limitation of actions.

If any action ſhall be brought againſt any perſon, for any thing done in purſuance of this act; ſuch action ſhall be commenced within three calendar months after the fact committed, and not afterwards; and ſhall be brought in the county, riding, diviſion, city or liberty, where the perſon againſt whom the action ſhall be brought doth ordinarily reſide, or in which the fact was committed, and not elſewhere; and the defendant may plead the general iſſue, and give this act and the ſpecial matter in evidence, and that the ſame was done in purſuance of this act. And if the ſame ſhall appear to have been ſo done, or if ſuch action ſhall not be brought within the ſaid limitation of time and place; the jury ſhall find for the defendant; or if the plaintiff be nonſuit, or diſcontinue, or judgment be given againſt him upon demurrer; the defendant ſhall have treble coſts. 7 *G.* 3. *c.* 42. *ſ.* 55.

Note, There is a proviſo that nothing herein ſhall alter the particular acts made for Kent, Suſſex, and the city of Briſtol.

II. Concerning turnpike roads in particular.

1. NO perſon ſhall be qualified to act as a turnpike truſtee in that part of Great Britain called England, unleſs he ſhall be in his own right, or in the right of his wife, in the actual poſſeſſion or receipt of the rents and profits of lands, tenements or hereditaments, of the clear yearly value of 40 l. or poſſeſſed of or intitled to perſonal eſtate to the value of 800 l. or ſhall be heir apparent of a perſon poſſeſſed of an eſtate in land of the clear yearly value of 80 l. and unleſs he hath taken, or ſhall (not being ſuch heir apparent) before he acts take and ſubſcribe the oath following before two truſtees, viz. *I* A. B. *do ſwear, that I truly and bona fide am, in my own right* [or, *in the right of my wife*] *in the actual poſſeſſion and enjoyment, or receipt of the rents and profits of lands, tenements, or here-* General qualification of truſtees.

ditaments of the clear yearly value of 40 *l.* [or, *poſſeſſed of or intitled to a perſonal eſtate to the value of* 800 *l.*]: *So help me God.* And if any perſon ſhall act contrary hereto, he ſhall forfeit 50 l. to him who ſhall ſue; and the proof ſhall lie on the perſon proſecuted, that he is qualified as above; otherwiſe he ſhall pay the ſaid ſum, without other proof or evidence on the part of the proſecutor, than that he hath acted as commiſſioner. 7 *G.* 3. *c.* 40. *ſ.* 34.

Note; This is one general qualification for all turnpike truſtees (within England). By the ſeveral particular turnpike acts, other qualifications are uſually appointed, all which ſhall ſtand, where the eſtate is limited, above what is here directed; only this clauſe provides, that no ſuch turnpike truſtee ſhall have leſs eſtate than is here limited.

Officers not to be alehouſekeepers.

2. No perſon who ſhall keep any victualling houſe, alehouſe, or other houſe of publick entertainment, or who ſhall ſell any wine, cyder, beer, ale, ſpirituous or ſtrong liquors by retail, ſhall be capable of acting as a truſtee, or of holding any place of truſt or profit under the truſtees of any turnpike act, or of farming the tolls granted thereby. 7 *G.* 3. *c.* 40. *ſ.* 36.

Meetings how to be ſuſtained.

3. Where a ſufficient number of truſtees ſhall not meet on the day appointed for the firſt meeting, or ſhall not meet on the day appointed by adjournment, or for want of a proper adjournment; ſo many truſtees as ſhall meet, or if none be there, then the clerk ſhall cauſe notice to be affixed on all the turnpikes on the reſpective roads, or if no turnpike be then erected, ſhall cauſe the like notice to be affixed in the moſt conſpicuous place in one of the principal towns or places neareſt to the ſaid roads, at leaſt 10 days before the intended meeting; appointing ſuch truſtees to meet at ſuch place where the preceding meeting was appointed to have been held, or at the place directed for the firſt meeting, if no ſuch preceding meeting ſhall have been held. 7 *G.* 3. *c.* 40. *ſ.* 39.

And no meeting ſhall be at any time adjourned for any longer time than three months. *ſ.* 40.

Hours of meeting.

4. No buſineſs ſhall be proceeded upon at any meeting, before the hour of ten in the forenoon; and no adjournment ſhall be made to any hour later than two in the afternoon. 7 *G.* 3. *c.* 40. *ſ.* 40.

Orders to be ſigned.

5. Every act agreed upon at any meeting, ſhall be ſigned at the ſaid meeting by a competent number of truſtees;

truſtees; otherwiſe every ſuch meeting, adjournment, and act reſpectively ſhall be void. 7 *G.* 3. *c.* 40. *ſ.* 40.

6. It ſhall be lawful for the truſtees or five of them, at a general meeting, if they think proper, at any gate, or on any part of the road, to order and cauſe to be erected a crane or engine, for weighing of carriages; and by writing ſigned by them, to order all ſuch carriages which ſhall paſs thro' any ſuch gate, to be weighed, together with their loading. 7 *G.* 3. *c.* 40. *ſ.* 1. Weighing engines to be erected.

7. And may take, over and above the toll, the ſum of 20*s.* for every hundred weight which every waggon or four wheeled carriage (not having the ſole or bottom of the fellies of the wheels of the breadth of 9 inches) together with the loading thereof, ſhall weigh over and above the weight of 60 hundred. Additional toll for over-weight.

And the like ſum of 20*s.* for every hundred weight which every waggon or four wheeled carriage, having the ſole or bottom of the fellies of the wheels of the breadth of 9 inches, together with the loading thereof, ſhall weigh over and above the weight of 6 tons:

And the like ſum of 20*s.* for every hundred weight which every cart or two wheeled carriage, having the ſole or bottom of the fellies of the wheels of the breadth of 9 inches, together with the loading thereof, ſhall weigh over and above the weight of 3 tons. 7 *G.* 3. *c.* 40. *ſ.* 1.

8. Provided, that the ſaid regulations ſhall not extend to any waggons or wains having the axle trees thereof of ſuch different lengths, that the diſtance from wheel to wheel of the narrower pair of the ſaid wheels be not more than four feet two inches, to be meaſured at the ground; and that the diſtance from wheel to wheel of the other pair thereof be ſuch, that the fore and hind wheels of ſuch waggons and wains ſhall roll only one ſingle ſurface of 16 inches wide at the leaſt, on each ſide of the ſaid waggons or wains; and having the fellies thereof of the breadth of 9 inches: but that the ſame ſhall paſs upon any turnpike road, and thro' any toll gate within 100 miles from London, on paying only ſo much of the tolls as ſhall not exceed one half of the full toll payable for waggons and wains having 9 inch wheels, and not rolling a ſurface of 16 inches. 7 *G.* 3. *c.* 40. *ſ.* 2. Diminution of tolls for carriages rolling 16 inches.

9. Provided alſo, that the ſaid regulations ſhall not extend to any carriages employed only in huſbandry, or carrying only manure for land, hay, ſtraw, fodder, or corn unthreſhed. 7 *G.* 3. *c.* 40. *ſ.* 3. Exception as to huſbandry.

Breadth of the wheels to be meaſured.

10. And the truſtees, or two of them, may by writing under their hands order the fellies of all waggons, wains, carts, or other carriages, which ought to be of the breadth herein before preſcribed, to be meaſured at any weighing engine or turnpike gate. 7 *G.* 3. *c.* 40. *ſ.* 4.

No compoſition unleſs for broad wheeled carriages.

11. It ſhall not be lawful to make compoſition for tolls, for any waggon, wain, cart, or carriage, unleſs they have the fellies of the wheels of the breadth of 9 inches. 7 *G.* 3. *c.* 40. *ſ.* 5.

Unloading to evade the tolls.

12. If any perſon ſhall unload any goods from any carriage, at or before they come to any turnpike gate or weighing engine; or ſhall lay upon ſuch carriage, after the ſame ſhall have paſſed the gate or engine, any goods taken or unloaden from any horſe, cart or other carriage, belonging to, or hired or borrowed by the ſame waggoner or carrier, in order to avoid the payment of the additional toll of 20 s. per hundred; he ſhall, on conviction before three truſtees or one juſtice, on the oath of one witneſs, forfeit 5 l. to be levied upon the goods of the owner of ſuch carriage: And every driver offending ſhall, on the like conviction, be committed to the houſe of correction for one month. And if any toll taker, at any gate where or near to which any crane or engine ſhall be erected, ſhall permit any loaden carriage as aforeſaid to paſs or repaſs thro' any ſuch gate without weighing; he ſhall, on like conviction, be immediately diſcharged, and rendered incapable of holding any office under the truſtees, or ſhall forfeit 5 l. at the option of ſuch truſtees. 7 *G.* 3. *c.* 40. *ſ.* 6.

Diſtances between the wheels not rolling 16 inches.

13. No waggon, wain, or cart ſhall paſs along any turnpike road, being above 20 miles from London or Weſtminſter, having the fellies of the wheels of the breadth of 9 inches at the bottom, unleſs the ſame ſhall be made and conſtructed in ſuch manner, that no pair of ſuch wheels (except ſuch as ſhall roll a ſurface of 16 inches) ſhall be wider than 4 feet 6 inches from inſide to inſide, to be meaſured from the ground; and that the diſtance from the centre of the fore wheel to the centre of the hind wheel, of any ſuch waggon or four wheeled carriage, (not being uſed for the carriage of timber only,) be not above 9 feet, to be meaſured from the centre of the axle-trees at the ends thereof; on pain of the owner forfeiting 5 l. And the ſurveyor or gatekeeper ſhall meaſure every ſuch waggon, wain, or cart; and if any maſter or driver ſhall hinder or refuſe to permit the ſame to be meaſured, he ſhall forfeit 5 l. and it ſhall not be lawful

lawful for ſuch carriage not permitted to be meaſured to paſs along any turnpike road. 7 *G.* 3. *c.* 40. *ſ.* 7.

Number of horſes or other beaſts of draught.

14. No waggon, wain, or other four wheeled carriage, having the ſole or bottom of the fellies of the wheels of the breadth of 9 inches, ſhall paſs or be drawn on any turnpike road with more than 8 horſes; nor any cart or other two wheeled carriage, having wheels of the breadth aforeſaid, ſhall paſs or be drawn on any turnpike road with more than 5 horſes; the horſes in ſuch reſpective carriages to be drawn in pairs, except where there is an odd horſe, and except where the number of horſes ſhall not exceed four; and no waggon, wain, or other four wheeled carriage, having the fellies of the wheels of leſs breadth than 9 inches, ſhall paſs or be drawn on any turnpike road with more than four horſes, or 6 oxen or neat cattle in pairs and 2 horſes, or 8 oxen or neat cattle in pairs and 1 horſe; and no cart or other two wheeled carriage, having the fellies of the wheels of leſs breadth than 9 inches, ſhall paſs or be drawn on any turnpike road with more than 3 horſes, or 4 oxen or neat cattle in pairs and 2 horſes, or 6 oxen or neat cattle in pairs and one horſe; on pain of the owner of the carriage forfeiting 20 s. and every horſe or other beaſt of draught above the number, to any perſon who ſhall ſeize or ſue for the ſame. 7 *G.* 3. *c.* 40. *ſ.* 8.

Fraudulently taking off horſes or altering wheels.

15. If any perſon ſhall take off or cauſe to be taken off any horſe or other beaſt of draught, or alter or cauſe to be altered the diſtance of the wheels, before the ſame ſhall come to any turnpike gate, with intent to avoid any toll or penalty aforeſaid; he ſhall, on conviction before three truſtees or one juſtice, on the oath of one witneſs, forfeit 5 l. 7 *G.* 3. *c.* 40. *ſ.* 9.

And every perſon who ſhall drive any ſuch carriage with more horſes or beaſts of draught, than ſuch carriage ſhall on the ſame day have paſſed with thro' any turnpike gate, ſhall be deemed to have taken off the ſame with intent to avoid paying the toll. *ſ.* 10.

Exception of drawing up ſteep hills.

16. Provided, that if it ſhall appear to the truſtees, or nine of them, at a publick meeting, that it is impracticable for any waggon or other four wheeled carriage, with the weights to the ſame reſpectively allowed as aforeſaid, to be drawn up any hill by the number of horſes herein before allowed, without manifeſt inconvenience and hazard; they may allow ſuch number of horſes as they ſhall judge neceſſary, not exceeding ten

for 9 inch wheels, nor ſix for wheels of leſs breadth than 9 inches, for the purpoſe only of drawing up ſuch hill; the length and extent of ſuch hill to be ſpecified in ſuch order of allowance, and the termination at each end thereof to be marked by a poſt or ſtone to be erected at ſuch reſpective boundaries: And the ſaid order of allowance ſhall be certified by the ſaid truſtees or their clerk to the next ſeſſions of the place where ſuch hill ſhall be; and if the facts, upon which the ſame is founded, ſhall be proved upon the oath of two witneſſes to the ſatisfaction of the court, the ſaid order ſhall be confirmed and filed amongſt the records, or otherwiſe ſhall be quaſhed. 7 *G.* 3. *c.* 40. *ſ.* 11.

Exception of ſnow or ice.

17. Provided alſo, that if it ſhall appear, upon the oaths of credible witneſſes, to the ſatisfaction of any juſtice or juſtices, truſtees, or of any court of juſtice authoriſed to inforce the execution of this act, that any waggon, cart, or carriage could not, by reaſon of deep ſnow or ice, be drawn with the reſpective weights and by the number of horſes or beaſts of draught hereby reſpectively allowed; in ſuch caſe, the ſaid juſtice or juſtices, truſtees, or court, ſhall ſtop all proceedings before them for the recovery of any forfeiture incurred by drawing [with] a greater number. 7 *G.* 3. *c.* 40. *ſ.* 12.

Narrow wheeled waggons not to be drawn by horſes in pairs.

18. And whereas great damage is done to turnpike roads, by waggons and four wheeled carriages drawn by horſes in pairs; therefore it ſhall not be lawful for any waggon or four wheeled carriage, having the bottom of the fellies of the wheels of leſs breadth than 9 inches, to paſs upon any turnpike road, or through any turnpike gate, if the ſame be drawn by horſes in pairs (other than and except waggons and four wheeled carriages loaden with fiſh, rabbits, poultry, calves alive or ſlaughtered, or lambs only). 7 *G.* 3. *c.* 40. *ſ.* 13.

Carriages turned out of the road.

19. No waggon, cart, or other carriage travelling on any turnpike road, ſhall be driven or turned out of the ſame into any of the roads adjacent not being turnpike roads, in order to avoid and thereby avoiding the toll; on pain of forfeiting any one of the horſes not being the thill or ſhaft horſe, with all his geers and accoutrements, to him who ſhall ſeize and diſtrain the ſame. 7 *G.* 3. *c.* 40. *ſ.* 14.

Gatekeepers required to proſecute.

20. If any gatekeeper ſhall ſuffer any carriage to paſs thro' the gate, or to paſs on the road within his view or knowledge, with a greater number of horſes, oxen, or neat cattle, or with any carriage conſtructed or drawn in any

any other manner than is before directed, and ſhall not within one week proceed for recovery of the penalty; he ſhall forfeit 40 s. 7 *G.* 3. *c.* 40. *ſ.* 15.

21. And if any perſon ſhall drive or act as driver of any carriage drawn by more than the number of horſes, oxen, or neat cattle above limited, or having wheels of a conſtruction not authoriſed by this act; any conſtable, ſurveyor, or any other perſon, may apprehend or cauſe him to be apprehended and carried before a juſtice; and on conviction before ſuch juſtice, by confeſſion, or oath of one witneſs, he ſhall forfeit 5 l. 7 *G.* 3. *c.* 40. *ſ.* 16. Driver offending.

22. Where any drag iron or other inſtrument ſhall be affixed under the ſole of the wheel or wheels of any waggon or other carriage, to make the paſſage more eaſy down ſteep hills; ſuch drag iron or inſtrument ſhall be flat at the bottom or ſole thereof, and ſhall not be of leſs breadth than the fellies of the wheels under which it ſhall be affixed; on pain of the owner of ſuch carriage forfeiting 40 s. 7 *G.* 3. *c.* 40. *ſ.* 17. Drag iron, form thereof.

23. Every owner of any waggon, wain, cart, or carriage, ſhall cauſe to be painted, in large and legible characters, upon the tilts of every ſuch carriage which hath a tilt, otherwiſe upon the moſt conſpicuous part thereof, before he ſhall uſe or drive the ſame on any turnpike road, his chriſtian and ſurname and place of abode; and if he ſhall by himſelf or his ſervant travel with or uſe ſuch carriage without ſuch name and place ſo painted thereon, or if he ſhall paint or cauſe to be painted any falſe or fictitious name thereon, he ſhall forfeit 5 l. 7 *G.* 3. *c.* 40. *ſ.* 18. What inſcription ſhall be on the waggon.

And every owner of any common ſtage waggon or cart ſhall, over and above his chriſtian and ſurname, cauſe to be painted on the part and in manner aforeſaid, the following words, COMMON STAGE WAGGON, or CART, as the caſe ſhall be; and if he ſhall by himſelf or his ſervant travel with or uſe the ſame, without having the ſaid words painted thereon, he ſhall forfeit 40 s. *id.*

24. Whereas by ſeveral particular acts, high and extraordinary tolls are directed to be paid for carriages drawn by more than a certain number of horſes or beaſts of draught, with an intent in effect to prohibit the paſſage of ſuch carriages, and thereby the better to preſerve the roads; it is enacted, that the truſtees of the ſaid roads, or 5 of them, ſhall, at their firſt meeting after the com- Diminution of tolls in favour of broad wheels.

mencement of this act, leſſen the ſaid high and extraordinary tolls, in reſpect of waggons or other wheel carriages having wheels of the breadth of 9 inches, in ſuch manner, as no greater toll, in reſpect of waggons, be taken, than is directed by the ſaid acts for waggons, and other four wheeled carriages drawn by four horſes or beaſts of draught; and that no greater toll, in reſpect of carts having 9 inch wheels, be taken, than is directed by the ſaid acts for carts drawn by three horſes: And they ſhall give directions to their collectors accordingly, 7 *G.* 3. *c.* 40. *ſ.* 19.

Tolls raiſed in reſpect of narrow wheels.

25. And the truſtees of every turnpike road, ſhall take for every waggon, wain, cart, or carriage, having the fellies of the wheels of leſs breadth than 9 inches, one half more than the tolls payable for the ſame by any particular act made or to be made, before ſuch carriage ſhall be permitted to paſs thro' the turnpike gate. 7 *G.* 3. *c.* 40. *ſ.* 20.

Provided, that it ſhall be lawful for any cart or carriage, drawn by two horſes or four oxen and no more, having the fellies of the wheels of the breadth of 6 inches, to paſs, paying the toll required by any ſuch act. *ſ.* 21.

Particular exemptions reſtricted to broad wheels.

26. And whereas there are or may be in ſeveral acts exemptions allowed from payment of tolls in particular caſes, and liberties allowed to pay leſs tolls, for carriages carrying ſome particular kinds of goods, than are charged upon other carriages of the like nature carrying other goods; it is enacted, that no perſon ſhall have the benefit of ſuch exemption or liberty, unleſs ſuch waggon, wain, cart, or carriage have the bottom of the fellies of the wheels of the breadth of 9 inches as aforeſaid: other than and except carts and carriages drawn by 2 horſes or 4 oxen, and no more, having the bottom of the fellies of the wheels of the breadth of 6 inches; and except carts and carriages employed in carrying corn or grain in the ſtraw, hay, fodder, dung, lime for the improvement of land, or other manure, or any implements of huſbandry only. 7 *G.* 3. *c.* 40. *ſ.* 22.

Exception of particular carriages.

27. Provided always, that nothing in this act ſhall extend to any chaiſe marine, coach, landau, berlin, chariot, chaiſe, calaſh, or herſe; or to any caravan, or covered carriage, of any nobleman or gentleman for his private uſe; or to ſuch ammunition or artillery as ſhall be for his majeſty's ſervice; or to any cart or carriage drawn by one horſe, or two oxen, and no more; or to any

any carriage having 9 inch wheels which ſhall be laden with one ſtone, block of marble, one piece of metal, or one piece of timber. 7 *G.* 3. *c.* 40. *ſ.* 23.

Taking benefit of exemptions fraudulently.

28. If any perſon ſhall take the benefit of any exemptions under this or any other turnpike act, in any fraudulent or colluſive manner; he ſhall forfeit, not exceeding 5*l.* nor leſs than 40*s.* 7 *G.* 3. *c.* 40. *ſ.* 24.

Power to leſſen the tolls, in what caſe.

29. Whereas by ſeveral acts now in force, there is no power given to the truſtees to leſſen the tolls, altho' the roads may be ſufficiently or in a great degree amended; it ſhall be lawful for the truſtees, or 13 of them, at a meeting to be held for that purpoſe, of which one calendar month's notice ſhall be given in writing, to be affixed on all the turnpike gates, from time to time, to leſſen the tolls during ſuch time as they ſhall think proper; and afterwards, at ſuch meeting, from time to time, as they ſhall ſee occaſion, to advance the ſaid tolls, to any ſum not exceeding the rates granted by ſuch acts reſpectively. 7 *G.* 3. *c.* 40. *ſ.* 25.

Provided, that where the whole money borrowed on the credit of the tolls ſhall not be paid; ſuch tolls ſhall not be leſſened without the conſent of the perſon or perſons intitled to five ſixths of the money remaining due. *ſ.* 26.

Proportioning of ſtatute duty.

30. Where there are two or more turnpike roads under ſeveral acts, within the ſame pariſh, townſhip or place, and the ſtatute duty directed by ſuch acts to be applied to the turnpike roads ſhall exceed 3 days duty in the whole; two juſtices at a ſpecial ſeſſions (having firſt ſummoned the clerks and ſurveyors of ſuch turnpike roads, and the ſurveyors of the highways for ſuch pariſh, townſhip, or place) ſhall adjuſt and proportion ſuch ſtatute duty betwixt ſuch turnpike roads and the other highways, as they ſhall think reaſonable. 7 *G.* 3. *c.* 40. *ſ.* 27.

Obſtructions.

31. If the ſurveyor ſhall ſuffer to remain for 48 hours, within 12 feet on either ſide of the middle of the road, any poſt, heap of ſtones, rubbiſh, or earth, by which the paſſage ſhall be obſtructed or ſtraitened, (except poſts, blocks, ſtones, or banks of earth, fixed or raiſed for ſecuring horſe or foot roads, and alſo direction poſts and ſtones;) he ſhall forfeit 40*s.* to be recovered before one juſtice. 7 *G.* 3. *c.* 40. *ſ.* 28.

Fencing or ploughing too near the road.

32. If any perſon ſhall make or cauſe to be made any hedge, ditch, or other fence, on any turnpike road not incloſed on both ſides, within 30 feet from the middle thereof;

thereof; or ſhall plow, harrow, or break up the ſoil, or in ploughing or harrowing ſhall turn the plough or harrow, upon any ground within 15 feet from the middle of the road; he ſhall forfeit 40s. to ſuch perſon who ſhall make information: And the truſtees, or 5 of them, may cauſe ſuch hedge, ditch, or fence to be taken down or filled up, at the expence of the perſon to whom the ſame ſhall belong. And one juſtice, on proof to him made upon oath, may levy as well the expences of taking down ſuch hedges, as the penalties, by diſtreſs. 7 *G.* 3. *c.* 40. *ſ.* 29.

Direction poſts and mile ſtones to be ſet up.

33. The truſtees ſhall direct the ſurveyor of any turnpike road, where ſeveral highways meet, and there is no ſufficient direction poſt already fixed, forthwith to cauſe to be erected a ſtone or poſt, with an inſcription thereon in large letters, containing the name of and diſtance from the next market town or towns, or other conſiderable place or places, to which the ſaid highways lead; and alſo, at the ſeveral approaches to ſuch parts of any highways as are ſubject to deep or dangerous floods graduated ſtones or poſts, denoting the depth of water in the deepeſt part; and likewiſe ſuch direction poſts or ſtones as the ſaid truſtees ſhall judge neceſſary for the guiding of travellers in the beſt and ſafeſt tract thro' the ſaid floods or waters; and alſo ſhall order the ſaid ſurveyor to erect mile ſtones upon ſuch turnpike road, with proper inſcriptions, denoting the names and diſtances from the principal towns or places on each reſpective road: The expences thereof to be paid out of the tolls. And if the ſurveyor ſhall neglect to do the ſame for the ſpace of 3 months, he ſhall forfeit 20s. 7 *G.* 3. *c.* 40. *ſ.* 30.

Demoliſhing direction poſts, mile ſtones, blocks, and battlements of bridges.

34. If any perſon ſhall pull up, cut down, and remove any poſts, blocks, or great ſtones, or dig and caſt down any banks of earth, fixed or caſt up for ſecuring any horſe or foot cauſway; or ſhall break, damage, or throw down the ſtones, bricks, or wood, fixed upon the parapets or battlements of bridges; or ſhall pull down or obliterate any mile ſtone, or poſt graduated, or direction poſt or ſtone; he ſhall, on conviction before one juſtice, by the oath of one witneſs, or upon view of the juſtice himſelf, forfeit not exceeding 5l. nor leſs than 10s. or be committed to the houſe of correction, to be whipped and kept to hard labour for any time not exceeding one calendar month nor leſs than 7 days, at the diſcretion of ſuch juſtice. 7 *G.* 3. *c.* 40. *ſ.* 31.

35. If any perſon ſhall, either by day or night, wilfully or maliciouſly pull down, pluck up, throw down, level, or otherwiſe deſtroy, any turnpike gate, poſt, rail, wall, chain, bar, or other fence, belonging to any turnpike gate, or any other chain, bar, or fence ſet up or erected to prevent paſſengers from paſſing by without paying toll; or any houſe erected for the uſe of ſuch turnpike gate; or any crane, machine, or engine erected on any turnpike road by authority of parliament for weighing waggons, carts, or carriages; or ſhall forcibly reſcue any perſon in cuſtody for ſuch offence; he ſhall be guilty of felony without benefit of clergy: And he may be tried in any adjacent county in England. 7 *G.* 3. *c.* 40. *ſ.* 32. And the hundred ſhall anſwer damages as in caſes of robbery. *ſ.* 33. Demoliſhing houſes, gates, bars, cranes.

36. If the truſtees ſhall erect or continue any turnpike gate, where they have not power ſo to do; the juſtices in ſeſſions, on complaint thereof, may determine the ſame in a ſummary way, and order the ſheriff to remove ſuch gate. 7 *G.* 3. *c.* 40. *ſ.* 41. Toll gate unlawfully erected.

37. The truſtees, or five of them, at a general meeting, may, if they think fit, direct proſecution by indictment, for any nuſance upon the turnpike road, at the expence of the tolls; provided that evidence can be had by confeſſion of the offender or oath of one witneſs, and not otherwiſe. 7 *G.* 3. *c.* 40. *ſ.* 37. Nuſances proſecuted out of the tolls.

38. The gatekeeper and ſurveyor ſhall, when required by notice in writing from the truſtees or 5 of them, render upon oath (to be taken before a juſtice or truſtee) a true and exact account in writing to the ſaid truſtees, or to any perſon named by them in ſuch notice, of all money received by them on account of the road, not before accounted for; on pain of 5l. on conviction before one juſtice, to the uſe of the road. 7 *G.* 3. *c.* 40. *ſ.* 45. Gatekeeper and ſurveyor to account.

39. No gatekeeper or perſon renting the tolls, and reſiding in the toll houſe, ſhall be removeable to his ſettlement, unleſs he become actually chargeable; nor ſhall by renting the tolls and reſiding in ſuch houſe gain a ſettlement: And no perſon, in reſpect of ſuch tolls or toll houſe, ſhall be rateable to the poor or other publick or parochial levy. 7 *G.* 3. *c.* 40. *ſ.* 46. Gatekeeper privileged as to ſettlement and taxes.

40. On the death of a gatekeeper, two truſtees may appoint another until the next meeting: And if his wife or family ſhall refuſe to deliver up poſſeſſion within 4 days after ſuch new appointment; or if any gatekeeper, being diſcharged from his office by the truſtees, ſhall refuſe to deliver Gatekeeper dying or diſcharged.

deliver up poſſeſſion within 2 days after notice of his diſcharge; in either of the ſaid caſes, one juſtice by his warrant may order the conſtable, with ſuch aſſiſtance as ſhall be neceſſary, to enter in the day time, and remove the perſons and their goods, and put the new officer into poſſeſſion. 7 *G.* 3. *c.* 40. *ſ.* 44.

Officers to deliver up books.

41. All clerks, treaſurers, ſurveyors, and other officers, and their executors or adminiſtrators reſpectively, ſhall within 10 days after notice in writing given to them by the truſtees or 5 of them at a meeting, produce and deliver up to ſuch truſtees all books, accounts, papers, or writings relating to the execution of their offices, which ſhall be in their cuſtody or power; on pain of 20l. 7 *G.* 3. *c.* 40. *ſ.* 35.

Mortgagees to account.

42. Any mortgagee that ſhall have taken poſſeſſion of any toll gate ſhall, within 14 days after notice in writing from the truſtees or 5 of them, render upon oath (to be adminiſtred by a juſtice or truſtee) an exact account in writing, to ſuch truſtees or any perſon by them named in ſuch notice, of all money received by him or by any other to his uſe or by his authority, at ſuch toll gate, and what he hath expended in keeping the ſame; on pain of forfeiting 10l. to the ſaid truſtees, to be recovered by them or their clerk in a ſummary manner before one juſtice, and to be applied to the uſe of the road. 7 *G.* 3. *c.* 40. *ſ.* 42.

And if he ſhall keep poſſeſſion after he hath received the full ſum due upon his mortgage, and the intereſt thereof, with coſts; he ſhall forfeit to the ſaid truſtees, for the uſe of the road as aforeſaid, double the ſum he ſhall have received over and above the ſum due to him as aforeſaid, with treble coſts: to be recovered by the ſaid truſtees or their clerk in any of his majeſty's courts of record. *ſ.* 43.

Penalty of officers for neglect of duty.

43. Every conſtable refuſing or neglecting to put this act in execution, or to account for and deliver any forfeiture or penalty; and every ſurveyor, toll-gatherer, and all perſons employed by the truſtees who receive ſalaries, who ſhall wilfully neglect, for one week after the offence committed, to ſeize any ſupernumerary horſe, or to lay information upon oath before a juſtice or truſtees reſpectively at their meeting, as by this act is directed; ſhall, on conviction before one juſtice, on the oath of one witneſs, forfeit 10l. 7 *G.* 3. *c.* 40. *ſ.* 47.

44. If

44. If any perſon ſhall reſiſt, or make forcible oppoſition againſt any perſon employed in the execution of this act; or ſhall aſſault the collector of tolls in the execution of his office; or ſhall forcibly paſs thro' any gate, rail, chain, or other fence, without paying the toll; or ſhall hinder or attempt to prevent any perſon in the meaſuring of wheels, or in ſeizing or diſtraining any horſe or beaſt of draught; or make any reſcue of cattle or other goods diſtrained; or if any conſtable ſhall refuſe or neglect to execute any warrant of any juſtice or truſtees, purſuant to the directions of this or any turnpike act; he ſhall, on conviction before one juſtice, on the oath of one witneſs, forfeit not exceeding 10l. nor leſs than 40s. to the ſurveyor for the uſe of the road: and if not forthwith paid, or ſecured to be paid, upon conviction; ſuch juſtice ſhall commit him to the common gaol or houſe of correction, for any time not exceeding 3 months, unleſs the forfeiture ſhall be ſooner paid. 7 *G.* 3. *c.* 40. *ſ.* 50. General penalty for obſtructing the execution.

45. Every perſon who ſhall make any ſeizure or diſtreſs, of any horſe, beaſt, geers, or other things as aforeſaid, unleſs by warrant from a juſtice or the truſtees reſpectively, ſhall deliver the ſame into the cuſtody of the conſtable or ſome other pariſh officer of the ſame or of the next or adjacent town or pariſh where the diſtreſs was made; who ſhall receive into their cuſtody and ſafely keep the ſame, till the perſon who made the diſtreſs ſhall make proof upon oath before a juſtice of the offence committed; and the ſaid juſtice before whom ſuch proof ſhall be made, ſhall after conviction iſſue his precept to ſuch conſtable or pariſh officer, immediately to deliver the horſe, beaſt, geers, or other things ſo forfeited, to the party who ſeized or diſtrained the ſame, for his own uſe and benefit; paying ſuch reaſonable charges for keeping and ſecuring the ſame, as the ſaid juſtice ſhall allow. 7 *G.* 3. *c.* 40. *ſ.* 48. Seizures how to be made and proſecuted.

But if proof ſhall not be made before ſuch juſtice, within 6 days after ſuch delivery to the officer; then ſuch horſe, beaſt, geers, or other things ſhall be reſtored to the owner: and the perſon making ſuch ſeizure ſhall forfeit to the owner 40s; and ſhall pay to ſuch officer for keeping and ſecuring the diſtreſs, ſuch reaſonable charges as the ſaid juſtice ſhall allow. *id.*

46. All penalties and forfeitures by this act impoſed, and all coſts and charges to be allowed by the authority thereof, the manner of levying and recovery of which is Recovery of penalties and application thereof.

not

not hereby otherwiſe particularly directed, ſhall be levied by diſtreſs by warrant of one juſtice where the offence ſhall be committed or ſuch order for payment of coſts and charges ſhall be made: which warrant ſuch juſtice ſhall grant, on conviction of the offender by confeſſion or oath of one witneſs, or upon order made as aforeſaid. 7 *G.* 3. *c.* 40. *ſ.* 51.

And any juſtice may act in the execution of this act, notwithſtanding he may be a truſtee. *ſ.* 49.

And any inhabitant of the pariſh, townſhip, or place where the offence ſhall be committed may be a witneſs. *id.*

And to prevent fraudulent proſecutions and ſeizures, the juſtice before whom any information ſhall be brought, ſhall, where any prior ſeizure, information, or conviction ſhall be ſet up, examine into the real merits thereof; and if it ſhall appear, that the ſame was not done or proſecuted effectually to recover and apply the penalty or forfeiture for the real ends and purpoſes of the act, but to favour the offender, ſuch prior ſeizure, information, or conviction ſhall be deemed to be fraudulent and void; and the ſaid juſtice ſhall proceed to determine and convict as if no ſuch prior proceedings has been made. *ſ.* 38.

And if ſuch diſtreſs as aforeſaid cannot be found, and the ſaid penalties and forfeitures or the ſaid coſts and charges ſhall not be forthwith paid; the juſtice ſhall commit the offender, or perſon liable as aforeſaid, to the common gaol or houſe of correction of the place where the offence ſhall be committed or ſuch order ſhall be made, for any time not exceeding 3 months, unleſs the ſaid penalty, forfeiture, coſts, or charges ſhall be ſooner paid. And if ſuch perſon ſhall live out of the juriſdiction of the juſtice, any juſtice of the place where ſuch perſon ſhall inhabit, on requeſt to him made, and on a true copy of the conviction or order as aforeſaid proved before him upon oath, ſhall by his warrant cauſe the ſaid ſums to be levied as aforeſaid; and if no ſufficient diſtreſs can be had, ſhall commit ſuch offender or perſon liable as aforeſaid, to the common gaol or houſe of correction, for the time, and in the manner aforeſaid. *ſ.* 51.

And the penalties and forfeitures, when levied, ſhall be paid half to the informer, and half to the ſurveyor for the repair of the road, unleſs otherwiſe directed by this act. Provided, that where the ſame ſhall be recovered on

on the information of the ſurveyor, toll taker, or other perſon having any ſalary from the truſtees; the ſaid penalties and forfeitures ſhall be wholly applied for the repair of the road. *ſ.* 51, 52.

And every proſecutor or informer may, at his election, ſue for and recover any forfeiture or penalty impoſed by this or any other act made or to be made for repairing turnpike roads, in the ſame manner as ſuch forfeitures and penalties are directed to be ſued for and recovered by ſuch acts, or by action at law in any of his majeſty's courts of record, in manner following; that is to ſay, Where any perſon ſhall be liable to any pecuniary penalty, the ſame may be recovered by action of debt; in which, it ſhall be ſufficient to declare, that the defendant is indebted to the plaintiff in the ſum of——— being forfeited by an act paſſed in the 7th year of the reign of his preſent majeſty, intituled, *An act to explain, amend, and reduce into one act of parliament, the general laws now in being for regulating the turnpike roads of this kingdom, and for other purpoſes therein mentioned:* And where the penalty or forfeiture is of any horſe or beaſt of draught, or other goods,——by an action of trover; in which, the forfeiture ſhall be ſufficient evidence of property to the plaintiff; and in which, the value of ſuch horſe, beaſt of draught, or other goods, ſhall be given in damages, without any proof of ſeizure or demand. And the plaintiff, if he recover, ſhall have full coſts.—Provided, that there ſhall not be more than one recovery for the ſame offence; and that 10 days notice in writing be given to the party offending; and that the action be brought within one calendar month after the offence committed. *ſ.* 53.

47. Where any diſtreſs ſhall be made, the ſame ſhall not be unlawful, nor the party diſtraining a treſpaſſer, on account of any defect or want of form in the proceedings; nor ſhall the party diſtraining be deemed a treſpaſſer *ab initio*, on account of any irregularity which ſhall be afterwards done by the party diſtraining: but the perſon aggrieved may recover ſatisfaction in a ſpecial action on the caſe. 7 *G.* 3. *c.* 40. *ſ.* 54. Irregularity in the proceedings.

48. And no plaintiff ſhall recover in any action for ſuch irregularity, if tender of ſufficient amends ſhall be made before the action brought: And if no ſuch tender ſhall have been made, the defendant, by leave of the court, at any time before iſſue joined, may pay into court ſuch ſum as he ſhall ſee fit; whereupon ſuch proceedings Tender of amends.

ceedings ſhall be had, as in other actions where the defendant is allowed to pay money into court. 7 *G.* 3. *c.* 40. *ſ.* 55.

Appeal.

49. If any perſon ſhall think himſelf aggrieved, by any thing done by any juſtice or truſtees in purſuance of this act, for which no particular method of relief hath been already appointed; he may appeal to any general quarter ſeſſions to be held within 6 months after the cauſe of the complaint ſhall have ariſen: giving 8 days notice in writing to ſuch juſtice or truſtees, of his intention to bring ſuch appeal, and of the matter thereof; and within 4 days after notice, entring into recognizance before a juſtice, with one ſurety, conditioned to try ſuch appeal at, and abide the order of, and pay ſuch coſts as ſhall be awarded by the juſtices of ſuch quarter ſeſſions. And every juſtice, and the ſaid truſtees, having received ſuch notice, ſhall return all proceedings before them touching the matter of ſuch appeal, to the ſaid ſeſſions; on pain of 5 l. And the ſaid juſtices at ſuch ſeſſions, on proof of ſuch notice being given, and of the entring into ſuch recognizance, ſhall determine the cauſe in a ſummary way, and award coſts to either party as they ſhall think proper, to be recoverd as herein before directed. And the determination of ſuch ſeſſions ſhall be final. And no proceeding to be had in purſuance of this act ſhall be quaſhed for want of form, or removed by certiorari or any other proceſs into any of his majeſty's courts of record at Weſtminſter. 7 *G.* 3. *c.* 40. *ſ.* 56.

Provided, that no ſuch appeal ſhall be made againſt any conviction for the forfeiture of any horſe or other beaſt by virtue of this act, unleſs the perſon convicted ſhall at the time of the conviction, give notice of his intention to appeal; and at the ſame time enter into recognizance, with ſufficient ſureties, to pay the value of ſuch horſe or other beaſt, in caſe the conviction ſhall be affirmed upon appeal: And on his giving ſuch ſecurity, ſuch horſe or other beaſt ſhall be forthwith delivered to him. *ſ.* 57.

Power to adminiſter an oath.

50. Where any oath is hereby directed to be made; the juſtices or truſtees reſpectively ſhall have power to adminiſter the ſame. 7 *G.* 3. *c.* 40. *ſ.* 58.

Limitation of actions.

51. If any action ſhall be commenced againſt any perſon, for any thing done in purſuance of this act; the ſame ſhall be commenced within 3 calendar months after the fact committed; and ſhall be brought in the county or place where the defendant doth ordinarily inhabit, or where

where the fact was committed; and the defendant may plead the general iſſue, and give this act and the ſpecial matter in evidence, and that the ſame was done in purſuance of this act. And if the ſame ſhall appear to have been ſo done, or ſuch action ſhall be brought after the time or in other place than as aforeſaid, the jury ſhall find for the defendant; or if the plaintiff be nonſuit, or diſcontinue, or upon demurrer judgment ſhall be given againſt him, the defendant ſhall have treble coſts. 7 *G.* 3. *c.* 40. *ſ.* 60.

A. Warrant for returning new ſurveyors.

Weſtmorland. { To *Edward Cooke*, gentleman, high conſtable of *Lonſdale* ward within the ſaid county.

BY *virtue of the ſtatute in that behalf made, we* ——— *of his majeſty's juſtices of the peace for the ſaid county, do hereby require you forthwith to iſſue your warrants to all the petty conſtables within your ſaid ward, in the form or to the effect following, that is to ſay,*

Weſtmorland, Lonſdale ward. { To the conſtable of ———

BY *virtue of a precept from his majeſty's juſtices of the peace for the ſaid county to me directed, you are hereby required to give notice to the churchwardens, ſurveyors of the highways, and other houſholders within your townſhip, aſſeſſed to any parochial or publick rate, that they do aſſemble together with you the ſaid conſtable, at the church or chapel, or if there be no church or chapel, then at the uſual place of publick meetings within your townſhip, on the*——*day of this preſent month of* September, *at the hour of eleven in the forenoon, and make a liſt of the names of ten perſons living within your townſhip, who each of them have an eſtate in lands, tenements, or hereditaments, lying within your townſhip, in their own right, or in the right of their wives, of the yearly value of* 10 l. *or a perſonal eſtate of the value of* 100 l. *or are occupiers or tenants of houſes, lands, tenements, or hereditaments of the yearly value of* 30 l; *and if there be not ten perſons having ſuch qualification, that then they inſert in ſuch liſt the names of ſo many as are ſo qualified, together with the names of ſo many of the moſt ſufficient and able inhabitants not ſo qualified, as ſhall make up the number ten, if ſo many can be found; if not, then ſo many*

or ſhall be there reſident: With which ſaid liſt you are to appear before the ſaid juſtices, at their ſpecial ſeſſions to be holden at —— in the ſaid county, on the —— day of October *now next enſuing, at the hour of —— in the forenoon of the ſame day; that out of the ſaid liſt, the ſaid juſtices then and there may nominate and appoint ſuch perſons to be ſurveyors of the highways within your ſaid townſhip, for the year then next enſuing, as they the ſaid juſtices ſhall think fit and approve of. And within three days after making the aforeſaid liſt, you are to give perſonal notice to, or cauſe notice in writing to be left at the place of abode of the ſeveral perſons contained in the ſaid liſt, informing them of their being ſo named, to the intent that they may appear (if they ſo think fit) before the ſaid juſtices at the ſaid ſpecial ſeſſions, to accept the ſaid office if they ſhall be appointed thereto, or to ſhew cauſe if they have any againſt their being appointed. And you are likewiſe to give notice to the preſent ſurveyors, that they do appear at the ſame time and place, and give an account upon oath before the ſaid juſtices of their receipts and diſburſements, and other matters relating to their office. Given under my hand at* Hall Beck *in the ſaid county, the —— day of ———*

Edward Cooke,
High Conſtable.

And this you the ſaid high conſtable are in no wiſe to omit, on the peril that ſhall enſue thereof. Given under our hands and ſeals, the ——— day of ——— in the —— year of the reign of ———

B. Appointment of the ſurveyor.

Weſtmorland, } At a ſpecial ſeſſions of the peace for the
Lonſdale ward. } ſaid county held at———in the county aforeſaid, the —— day of October in the year ——— by and before us whoſe names are hereunto ſet and ſeals affixed, juſtices aſſigned to keep the peace of our ſaid lord the king in the ſaid county:

WE *the ſaid juſtices do hereby nominate and appoint* A. S. *of the townſhip of ——— in the ſaid county, yeoman, to be ſurveyor of the highways for the ſaid townſhip, for the year enſuing. Given under our hands, and ſeals the day and year aforeſaid.*

If

If a ſpecial ſurveyor is appointed, then,

WE *the ſaid juſtices do hereby nominate and appoint* A. S. *of the townſhip of———in the ſaid county, yeoman, to be ſurveyor of the highways for the ſaid townſhip for the year enſuing; and do allow to him the ſalary of——for his trouble therein. Given, &c.*

C. Information of the default of labourers.

Weſtmorland. } BE *it remembred, that this——day of* ———A. S. *ſurveyor of the highways for the townſhip of———in the ſaid county, complaineth and maketh oath, before me* J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, that* A. O. *of the townſhip of———aforeſaid, in the county aforeſaid, yeoman,* keeping a team, draught, or plough *in the ſaid townſhip, was duly ſummoned by him the ſaid* A. S. *to find and ſend on the——day of———now laſt paſt, for the amending the highways in the ſaid townſhip,* one wain, cart, or carriage, furniſhed after the cuſtom of the country, with oxen, horſes, or other cattle, and all other neceſſaries meet to carry things convenient for that purpoſe, and alſo two able men with the ſame; *but that he the ſaid* A. O. *his duty in that behalf not regarding, did neglect and make default, and did not find and ſend* one wain, cart, or carriage furniſhed as aforeſaid with two able men as aforeſaid.

A. S.

Before me
J. P.

D. Summons on the aforegoing information.

Weſtmorland. } To the conſtable of ——

WHEREAS *complaint upan oath hath this day been made, before me* J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, by* A. S. *ſurveyor of the highways for the townſhip of———in the ſaid county, that* A. O. *of the townſhip of——— aforeſaid in the county aforeſaid, yeoman,* keeping a team, draught, or plough *in the ſaid townſhip, was duly ſummoned by him the ſaid* A. S. *to find and ſend, on the——day of———now laſt paſt,* one wain, cart, or carriage, furniſhed after the cuſtom of the country, with

oxen, horſes, or other cattle, and all other neceſſaries meet to carry things convenient for that purpoſe, and alſo two able men with the ſame; *but that he the ſaid* A. O. *did neglect and make default, and did not find and ſend* one wain, cart, or carriage furniſhed as aforeſaid, with two able men as aforeſaid, *on the ſaid* —— *day of* —— *for the amending the* ſaid highways as aforeſaid: *Theſe are therefore to command you forthwith to ſummon the ſaid* A. O. *to appear before me at* —— *in the ſaid county, on the* —— *day of* —— *at the hour of* —— *to anſwer unto the ſaid complaint. And be you then there to certify what you ſhall have done in the execution hereof. Herein fail you not. Given under my Hand and ſeal the* —— *day of* —— *in the year* ——

E. Warrant of diſtreſs thereupon.

Weſtmorland. } To the conſtable of ——

FORASMUCH *as* A O. *of the townſhip of* —— *in the county aforeſaid, yeoman, is convicted before me* J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, for that he the ſaid* A. O. keeping a team, draught, or plough *in the ſaid townſhip, was duly ſummoned by* A. S. *ſurveyor of the highways for the townſhip of* —— *aforeſaid, to find and ſend, on the* —— *day of* —— *now laſt paſt,* one wain, cart, or carriage, furniſhed after the cuſtom of the country, with oxen, horſes, or other cattle, and all other neceſſaries meet to carry things convenient for that purpoſe, and alſo two able men with the ſame; *and that he the ſaid* A. O. *did neglect and make default, and did not find and ſend* one wain, cart, or carriage furniſhed as aforeſaid, with two able men as aforeſaid, *on the ſaid* —— *day of* —— *for the amending the ſaid highways as aforeſaid, whereby he hath forfeited the ſum of* —— *Theſe are therefore, in his ſaid majeſty's name, to command you to levy the ſaid ſum by diſtreſs of the goods of him the ſaid* A. O. *And if within the ſpace of* [*five*] *days next after ſuch diſtreſs by you taken, the ſaid ſum of* —— *together with reaſonable charges of taking and keeping the ſaid diſtreſs ſhall not be paid; that then you do ſell the ſaid goods ſo by you diſtrained, and out of the money ariſing by ſuch ſale, that you do pay the ſaid ſum of* —— *to him the ſaid* A. S. *to be by him employed for and towards the repairing of the high-*

ways

ways in the township aforesaid; returning to him the said A. O. *the overplus upon demand, the reasonable charges of taking, keeping, and selling the said distress being first deducted. Herein fail you not. Given under my hand and seal, the——day of ———in the year——*

If he occupies 50l. a year or upwards, then the forms must be varied accordingly;———*that* A. O. *of the township aforesaid in the county aforesaid, yeoman, occupying lands, tenements and hereditaments within the said township of the yearly value of——pounds, was duly summoned by him the said* A. S. *to find and send, on the——day of——now last past, for the amending the highways in the said township, one wain, cart, or carriage, furnished with three horses (or as this case shall be) and all other necessaries meet to carry things convenient for that purpose, and also two able men with the same——* [If 60l. a year,——*three able men*——and so on.]

If he is not liable to send a cart or carriage, then,——*that* A. O. *of the township aforesaid in the county aforesaid, yeoman, occupying lands, tenements, and hereditaments within the said township, of the yearly value of ten pounds, was duly summoned by him the said* A. S. *to find and send, on the——day of——now last past, for the amending the highways in the said township, one sufficient labourer*; [If 20l. a year, *two labourers*; if 30l. a year, *three labourers*; if 40l. a year, *four sufficient labourers.*]

If under 10l. a year, then,——*that* A. O. *being an inhabitant in the said township, and of the age of* 18 *years, and upwards, and under the age of* 65 *years, and not being an apprentice nor menial servant, was duly summoned by him the said* A. S. *to find and send on the———day of———for the amending the highways in the said township, one sufficient labourer——*

If the complaint is for want of paying the composition money, then,——*that* A. O. *of———yeoman, keeping a team, draught, or plough in the said township, and thereupon liable to find and send, six days in the year, for the amending the highways in the township aforesaid, one wain, cart, or carriage, furnished with* [oxen, horses, or other cattle, according to the custom of the country] *and all other ne-*

ceſſaries meet to carry things convenient for that purpoſe, and alſo two able men with the ſame; and that the ſaid A. O. *did compound with him the ſaid* A. S. *for the ſum of*——*for and in lieu of the ſaid duty and labour; and that he the ſaid* A. O. *refuſeth to pay, and hath not paid to him the ſaid* A. S. *the ſaid ſum of*——.

And ſo in the other like caſes.

F. Indictment for not repairing a common highway.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, that from the time whereof the memory of man is not to the contrary, there was, and yet is a common and ancient king's highway leading from the town of*———*in the county of*———*towards and unto the market town of*———*in the county of*———, *uſed for all the liege ſubjects of our ſaid lord the king, and of his predeceſſors, with their horſes, coaches, carts, and carriages to go, return, paſs, ride, aud labour at their will and pleaſure, and that a certain part of the ſame king's common highway called*——— *ſituate, lying and being in the pariſh of*——— *in the county of*——*aforeſaid, containing in length*——*feet, and in breadth*——*feet, on the*———*day of*——*in the*———*year of the reign of*——— *and continually afterwards, until the day of the taking of this inquiſition, was and yet is in great decay, for the want of due reparation and amendment of the ſame; ſo that the ſubjects of our ſaid lord the king, paſſing and travelling through the ſame, with their horſes, coaches, carts and carriages, could not during the time aforeſaid, nor yet can go, return, paſs, ride, and labour without great danger; to the great damage and common nuſance of all the liege ſubjects of our ſaid lord the king, paſſing through that way, and againſt the peace of our ſaid lord the king, his crown and dignity; And that* A. O. *of*——*aforeſaid, gentleman, ought by reaſon of the tenure of his lands and tenements, ſituate, lying and being at*——*aforeſaid in the county aforeſaid, to repair and amend the ſaid highway, when and ſo often as it ſhall be neceſſary.*

Or,

Or, *that the inhabitants of the ſaid pariſh of———in the ſaid county of——the common highway aforeſaid (ſo as aforeſaid being in decay) ought to repair and amend, when and ſo often as it ſhall be neceſſary.*

Indictment for not repairing an ancient horſe and foot way.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, that from the time of which the memory of man is not to the contrary, there was, and yet is, a certain common and ancient highway, leading from———in the county of———to———in the county of———for all the liege ſubjects of our now lord the king, and his anceſtors, on horſeback and on foot, to go, return, paſs, ride, labour, and drive their cattle at their will, and that a certain part of the ſame common highway, ſituate, lying, and being within the pariſh of———in the county of——— aforeſaid, containing in length——feet, and in breadth——feet, on the———day of———in the———year of the reign of——— and continually afterwards, until the day of the taking of this inquiſition, at the pariſh of———aforeſaid, in the county aforeſaid, was, and yet is, very ruinous, miry, deep, broken, and in ſuch decay, for want of due reparation and amendment of the ſame, that the liege ſubjects of our ſaid lord the king, by and through the ſame way, with their horſes and cattle, could not during the time aforeſaid, nor yet can go, return, paſs, ride, and labour, as they ought and were wont to do, without great danger of themſelves and of their goods, to the great damage and common nuſance of all the liege ſubjects of our ſaid lord the king, through the ſame highway going, returning, paſſing, riding, and labouring, and againſt the peace of our ſaid lord the king. And that the inhabitants of the ſame pariſh of———in the county aforeſaid, the ſame common highway, ſo as aforeſaid being in decay, ought to repair and amend, when, and ſo often as it ſhall be neceſſary.*

Indictment for incroaching upon a highway, by building thereupon.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, that* A. O. *late of* ——— *carpenter, the* ——— *day of* ——— *in the* ——— *year* ——— *with force and arms, at* ——— *in and upon a common highway, in a certain place commonly called* ——— *there leading from* ——— *to* ——— *by a certain building there containing in length* ——— *feet, and in breadth* ——— *feet, by him the ſaid* A. O. *erected and built, hath unlawfully and unjuſtly incroached, and doth yet incroach, and the building aforeſaid ſo as is aforeſaid erected and built by him the ſaid* A. O. *from the aforeſaid* ——— *day of* ——— *in the year aforeſaid, unto the day of exhibiting this information, at* ——— *aforeſaid in the county aforeſaid, with force and arms unlawfully and unjuſtly hath continued, and doth yet continue, by reaſon whereof the common highway aforeſaid hath become and is greatly ſtraitned, ſo that the lieges and jubjects of the ſaid lord the king upon and through the ſame common highway aforeſaid, with their horſes, carts, and carriages, cannot go, paſs, ride, and labour as they ought and were wont to do, to the great and common nuſance of all the lieges and ſubjects of the ſaid lord the king in and through the ſaid common highway going, paſſing, riding, and labouring, and againſt the peace of the ſaid lord the king.* Trem. 196.

Indictment for incloſing the highway.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, That whereas from the time whereof the memory of man is not to the contrary, it was uſed, that the liege ſubjects of our ſaid lord the king had lawfully uſed a certain common highway at* ——— *in the ſaid county, in a certain place there called* ——— *leading from the town of* ——— *aforeſaid, to the town of* ——— *for themſelves and their goods, without any ſtoppage or hindrance by any ditches, hedges, or other obſtacles whatſoever; nevertheleſs one* A. O. *of* ——— *aforeſaid, in the county of* ——— *aforeſaid, yeoman, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *with force and arms at* ——— *aforeſaid, in the county of* ——— *aforeſaid, in the place aforeſaid called* ——— *upon the common highway aforeſaid, a certain ditch and quickſet hedge did caſt up, ſet, and erect, and the ſaid ditch and quickſet hedge ſo as is aforeſaid*

caſt up, ſet, and erected, doth yet continue and keep; to the great ſtoppage and hindrance of the liege ſubjects of our ſaid lord the king, paſſing in and thro' the ſaid common highway, and againſt the peace of our ſaid lord the king.

Indictment for laying timber or other obſtructions in the highway.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, that* A. O. *late of* ——— *in the county aforeſaid, yeoman, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *and on divers other days and times as well before as afterwards, with force and arms, at* ——— *in the ſaid county, in and upon the king's common highway there, leading from* ——— *unto the town of* ——— *divers great pieces of timber put and placed, and cauſed to be put and placed, and the ſame great pieces of timber ſo as aforeſaid put and placed from the aforeſaid* ——— *day of* ——— *in the* ——— *year aforeſaid, until the day of exhibiting this information, in and upon the king's common highway aforeſaid to be, lie, and remain, hath permitted and doth ſtill permit, to the grievous and common nuſance of all the lieges and ſubjects of the ſaid lord the king, upon and through the king's common highway aforeſaid going, paſſing, riding and travelling, and againſt the peace of our ſaid lord the king, his crown and dignity.* Trem. 197.

Or, ——— *great quantity of dung and other filth, by reaſon whereof divers hurtful and unwholſome ſmells from the ſaid dung and other filth did then and there ariſe, and thereby the air there became, was and is corrupted and infected*———.

Or,——*cart loads of rubbiſh—by reaſon whereof the ſaid highway for the whole time aforeſaid was ſtraitned and obſtructed, ſo that the liege ſubjects of our ſaid lord the king could not ſo freely paſs and repaſs about their lawful buſineſs, through the ſaid common highway there, as they ought and have been accuſtomed*——.

Indictment for ſtopping up a watercourſe, whereby the highway is overflowed.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, that* A. O. *late of the pariſh of* ——— *in the county aforeſaid, yeoman, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *with force and arms, at the pariſh aforeſaid, in the county aforeſaid, a certain ancient watercourſe adjoining to the king's common highway, within the ſame pariſh, leading from the town of* ——— *in the county aforeſaid, towards and unto* ——— *with gravel and other materials, unlawfully and injuriouſly did obſtruct and ſtop up; and the ſaid watercourſe, ſo as aforeſaid obſtructed and ſtopped up from the ſaid* ——— *day of* ——— *in the year aforeſaid until the day of the taking of this inquiſition, at the pariſh aforeſaid in the county aforeſaid, unlawfully and injuriouſly hath continued and ſtill doth continue, by reaſon whereof the rain and waters that were wont and ought to flow and paſs through the ſaid watercourſe, on the ſame day and year, and divers other days and times afterwards, between that day and the day of the taking of this inquiſition, did overflow and remain, in the king's common highway aforeſaid, and thereby the ſame was, and yet is greatly hurt and ſpoiled; ſo that the liege ſubjects of our ſaid lord the king, through the ſame way with their horſes, coaches, carts and carriages, then and on the ſaid other days and times, could not nor yet can go, return, paſs, ride, and labour as they ought, and were wont to do, to the great damage and common nuſance of all the liege ſubjects of our ſaid lord the king, through the ſame highway going, returning, paſſing, riding and labouring, and againſt the peace of our ſaid lord the king.*

G. Preſentment by a juſtice.

Weſtmorland. AT *the general quarter ſeſſions of the peace of our lord the king, held for the county of* ——— *aforeſaid, at* ——— *in the ſaid county, on* Monday *the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *before* ——— *eſquires, and others their companions, juſtices of our ſaid lord the king aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed,* Thomas Carleton, *eſquire, one of the juſtices of our ſaid lord the king, aſſigned to keep the peace in the ſaid county,*

county, and alſo to hear and determine divers fellonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, by virtue of the ſtatute in ſuch caſe made and provided, upon his own proper view and knowledge [or, *upon information on oath to him given by* A. S. *ſurveyor of the highways for the pariſh of* ——— *in the ſaid county*] *doth preſent, That from the time whereof the memory of man is not to the contrary, there was and yet is, a certain common and ancient king's highway, leading from the town of* ——— *in the county of* ——— *towards and unto* ——— *uſed for all the liege ſubjects of our ſaid lord the king and his predeceſſors, with their horſes, coaches, carts, and carriages, to go, return, paſs, ride, and labour at their will; and that a certain part of the ſame king's common highway, commonly called* ——— *ſituate, lying, and being in the pariſh of* ——— *in the ſame county, containing in length* ——— *yards, and in breadth* ——— *feet, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *and continually afterwards, until this preſent day, at the ſaid pariſh of* ——— *in the county aforeſaid, was and yet is very ruinous, miry, deep, broken and in great decay, for want of due reparation and amendment of the ſame, ſo that the liege ſubjects of our ſaid lord the king, through the ſame way, with their horſes, coaches, carts, and carriages, could not during the time aforeſaid, nor yet can go, return, paſs, ride, and labour as they ought and were wont to do, to the great damage and common nuſance of all the liege ſubjects of our ſaid lord the king, through the ſame highway going, returning, paſſing, riding and labouring, and againſt the peace of our ſaid lord the king; and that the inhabitants of the pariſh of* ——— *aforeſaid, in the county aforeſaid, the common highway aforeſaid (ſo as aforeſaid being in decay) ought to repair and amend, when and ſo often as it ſhall be neceſſary. In teſtimony whereof, the ſaid* Thomas Carleton, *to theſe preſents hath ſet his hand and ſeal, this* ——— *day of* ——— *in the year aforeſaid.*

Highwaymen. See **Robbery.**

Homicide.

Homicide.

HOMICIDE in law ſignifies the killing of a man by a man. 1 *Haw.* 66.

And it includes in it, not only petit treaſon, concerning which ſee title **Treaſon**; but alſo the ſeveral offences which are treated of in the following ſections.

There is alſo another kind of untimely death of a man, not properly homicide: when he is killed by a horſe, a cart, a tree, or the like, and not by a man; which is called caſual death; for which ſee title **Deodand.**

I. Juſtifiable homicide.
II. Homicide by miſadventure.
III. Homicide by ſelf defence.
IV. Manſlaughter.
V. Murder.
VI. Self-murder.

I. Juſtifiable homicide.

On a real neceſſity.

1. To make homicide juſtifiable, it muſt be owing to ſome unavoidable neceſſity, to which the perſon who kills another muſt be reduced, without any manner of fault in himſelf. 1 *Haw.* 69.

And there muſt be no malice coloured under pretence of neceſſity; for wherever a perſon who kills another, acts in truth upon malice, and takes occaſion from the appearance of neceſſity to execute his own private revenge, he is guilty of murder. 1 *Haw.* 69.

Killing robbers and burglars.

2. If any evil diſpoſed perſon ſhall attempt feloniouſly to rob or murder any perſon in any dwelling houſe or highway, or feloniouſly attempt to break any dwelling houſe in the night time, and ſhall happen in ſuch felonious intent to be ſlain; the ſlayer ſhall be diſcharged, and ſhall forfeit no lands nor goods. 24 *H.* 8. *c.* 5.

Treſpaſſers in parks.

3. If treſpaſſers in a foreſt, chaſe, park, or warren, or any incloſed ground wherein deer are kept, will not render themſelves to the keepers, upon a hue and cry made to

to ſtand to the king's peace, but fly from, or defend themſelves againſt them, they may be ſlain by them. 1 *Haw.* 71.

4. If rioters, or forcible enterers or detainers, ſtand in oppoſition to the juſtices lawful warrant, and any of them is ſlain; it is no felony. *Hale's Pl.* 37. Rioters.

5. If a man comes to burn my houſe, and I ſhoot out of my houſe, or iſſue out of my houſe, and kill him; it is no felony. *Hale's Pl.* 39. Houſeburners.

6. If a woman kill him that aſſaulteth to raviſh her; it is no felony. *Hale's Pl.* 39. Raviſhers.

7. If a perſon having actually committed a felony, will not ſuffer himſelf to be arreſted, but ſtand on his own defence, or fly, ſo that he cannot poſſibly be apprehended alive by thoſe who purſue him, whether private perſons, or publick officers, with or without a warrant from a magiſtrate; he may be lawfully ſlain by them. 1 *Haw.* 70. Felons refuſing to be arreſted.

8. So if a felony hath actually been committed, and an officer or miniſter of juſtice, having lawful warrant ſo to do, arreſt an innocent perſon, and ſuch perſon aſſault the officer or miniſter of juſtice; the officer is not bound by law to give back, but to carry him away; and if in execution of his office, he cannot otherwiſe avoid it, but in ſtriving kill him, it is no felony. And in that caſe, the officer or miniſter of juſtice ſhall forfeit nothing; but the party ſo aſſaulting, or offering to fly away, and is killed, ſhall forfeit his goods. 3 *Inſt.* 56. Suſpected felon refuſing to be arreſted.

9. Alſo if a perſon arreſted for felony, break away from his conductors to gaol, they may kill him, if they cannot otherwiſe take him. But in this caſe likewiſe, there muſt have been a felony actually committed. *Hale's Pl.* 36, 37. Felon eſcaping.

10. Alſo if a criminal endeavouring to break the gaol, aſſault his gaoler, he may be lawfully killed by him in the affray. 1 *Haw.* 71. Felon breaking gaol.

11. In civil cauſes; although the ſheriff cannot kill a man who flies from the execution of a civil proceſs; yet if he reſiſt the arreſt, the ſheriff or his officer need not give back, but may kill the aſſailant. *Hale's Pl.* 37. Reſiſting a civil proceſs.

So if in the arreſt and ſtriving together, the officer kill him, it is no felony. *Hale's Pl.* 37.

12. In all theſe caſes the party upon arraignment having pleaded not guilty, the ſpecial matter muſt be found; Trial and diſcharge.

whereupon

whereupon the party ſhall be diſmiſſed, without any forfeiture, or pardon purchaſed. *Hale's Pl.* 38.

II. Homicide by miſadventure.

Chancemedley.

1. I have purpoſely avoided the word *chancemedly* in this place, becauſe authors do not ſeem to be agreed whether it is to be applied to homicide *by miſadventure*, or to *manſlaughter*. Ld. *Coke* and Mr. *Hawkins* ſeem to underſtand it of *manſlaughter*; Ld. *Hale*, and others, of homicide *by miſadventure*. The original meaning of the word ſeems to favour the former opinion, as it ſignifies a ſudden or caſual meddling or contention; whereas homicide *by miſadventure* ſuppoſes no previous meddling or falling out. But the ſame author ſometimes in different places, applies it to both of them promiſcuouſly.

What is homicide by miſadventure.

2. Homide by miſadventure is, where a man is doing a lawful act, without intent of hurt to another, and death caſually enſues. *Hale's Pl.* 31.

Caſes of homicide by miſadventure.

3. As where a labourer being at work with a hatchet, the head flies off, and kills one who ſtands by. 1 *Haw.* 73.

4. Or where a third perſon whips a horſe, on which a man is riding, whereupon he ſprings out and runs over a child, and kills him; in which caſe the rider is guilty of homicide by miſadventure, and he who gave the blow of manſlaughter. 1 *Haw.* 73.

5. But if a perſon riding in the ſtreet whip his horſe to put him into ſpeed, and run over a child and kill him, it is homicide and not by miſadventure; and if he ride ſo, in a preſs of people, with intent to do hurt, and the horſe killeth another, it is murder in the rider. 1 *H. H.* 476.

6. If a perſon drives his cart careleſly, and it runs over a child in the ſtreet, if he have ſeen the child, and yet drives on upon him, it is murder; but if he ſaw not the child, yet it is manſlaughter; but if the child had run croſs the way, and the cart run over the child before it was poſſible for the carter to make a ſtop, it is by miſadventure. 1 *H. H.* 476.

7. So where workmen throw ſtones, rubbiſh, or other things, from an houſe, in the ordinary courſe of their buſineſs, by which a perſon underneath happens to be killed; if they look out and give timely warning to thoſe below, it will be homicide by miſadventure; if without ſuch caution, it will amount to manſlaughter at leaſt,

it

it was a lawful act, but done in an improper manner. It is ſaid by ſome, that if this be done in the ſtreets of *London*, or other populous towns, it will be manſlaughter notwithſtanding the caution above mentioned. But this will admit of ſome limitation. If it be done early in the morning, when few or no people are ſtirring, and the ordinary caution is uſed, it ſeemeth that the party is excuſable. But when the ſtreets are full, that will not ſuffice; for in the hurry and noiſe of a crouded ſtreet, few people hear the warning, or ſufficiently attend to it. *Foſt.* 262, 263.

8. It is ſaid before, that this homicide is only when it happeneth upon a man's doing a lawful act; for if the act be unlawful, it is murder. As if a perſon, meaning to ſteal a deer, in another man's park, ſhooteth at the deer, and by the glance of the arrow killeth a boy, that is hidden in a buſh; this is murder, for that the act was unlawful, altho' he had no intent to hurt the boy, nor knew of him. But if the owner of the park had ſhot at his own deer, and without any ill intent had killed the boy by the glance of his arrow, this had been homicide by miſadventure, and no felony. 3 *Inſt.* 56.

9. So if any one ſhoot at any wild fowl upon a tree, and the arrow killeth any reaſonable creature afar off, with out any evil intent in him, this is by miſadventure; for it was not unlawful to ſhoot at the wild fowl: But if he had ſhot at a cock or a hen, or any tame fowl of another man's, and the arrow by miſchance had killed a man; if his intention was to ſteal the poultry (which muſt be collected from circumſtances), it will be murder by reaſon of that felonious intent; but if it was done wantonly, and without that intention, it will be barely manſlaughter. *Foſt.* 258, 9.

10. The rule before laid down ſuppoſeth, that the act from which death enſued, was *malum in ſe*. For if it was barely *malum prohibitum*, as ſhooting at game by a perſon not qualified by ſtatute law to keep or uſe a gun for that purpoſe; the caſe of a perſon ſo offending, will fall under the ſame rule as that of a qualified man. For the ſtatutes prohibiting the deſtruction of the game, under certain penalties, will not in a queſtion of this kind enhance the accident beyond its intrinſick moment. *Foſt.* 259.

11. Further, if there be an evil intent, tho' that intent extendeth not to death, it is murder, Thus, if a man knowing that many people are in the ſtreet, throw

a ſtone over a wall, intending only to fright them, or to give them a little hurt, and thereupon one is killed, this is murder; for he had an ill intent, tho' that intent extended not to death, and tho' he knew not the party ſlain. 3 *Inſt.* 57.

12. And it is a general rule, in caſe of all felonies, that wherever a man intending to commit one felony, happens to commit another, he is as much guilty as if he had intended the felony which he actually commits. 1 *Haw.* 74.

13. But in all the caſes above, if it doth only hurt a man, by ſuch an accident, it is nevertheleſs a trefpaſs; and the perſon hurt ſhall recover his damages; for tho' the chance excuſe from felony, yet it excuſeth not from treſpaſs. 1 *H. H.* 472.

Eſcape. 14. If a perſon eſcape that hath killed another by miſadventure, the town ſhall be amerced. 2 *Inſt.* 149.

This kind of homicide no felony. 15. This homicide is not felony, becauſe it is not accompanied with a felonious intent, which is neceſſary in every felony. 1 *Haw.* 75.

Bail. 16. But yet a perſon guilty thereof is not bailable by juſtices of the peace, but muſt be committed to the aſſizes. 1 *Haw.* 75.

But if he is taken only on a ſlight ſuſpicion, the juſtices of the peace may bail him. 2 *Haw.* 105.

Forfeiture. 17. Altho' this homicide is not properly a man's crime, but his misfortune; yet becauſe the king hath loſt his ſubject, and in reſpect of the great favour the law hath to the life of man, and to the end that men ſhould uſe all care, diligence, and circumſpection in all they do, that no hurt ſhould come of their actions, a perſon convicted hereof ſhall forfeit his goods, and ſhall not preſently be diſcharged of his impriſonment, but bailed, that he may ſue out his pardon, which he ſhall have out of the chancery of courſe. 1 *H. H.* 477, 492. 1 *Haw.* 76.

III. Homicide by ſelf-defence.

Se defendendo, what. 1. Homicide in a man's own defence ſeems to be, where one who hath no other poſſible means of preſerving his life from one who combats with him on a ſudden quarrel, kills the perſon by whom he is reduced to ſuch an inevitable neceſſity. 1 *Haw.* 75.

Caſes of ſe defendendo. 2. And not only he, who upon an aſſault retreats to a wall, or ſome ſuch ſtrait, beyond which he can go no farther, before he kills the other, is judged by the law

law to act upon unavoidable neceſſity; but alſo he, who being aſſaulted in ſuch a manner, and in ſuch a place, that he cannot go back without manifeſtly indangering his life, kills the other without retreating at all. 1 *Haw.* 75.

3. And notwithſtanding a perſon who retreats from an aſſault to the wall, give the other wounds in his retreat, yet if he give him no mortal one till he get thither, and then kill him, he is guilty of homicide *ſe defendendo* only. 1 *Haw.* 75.

4. But if the mortal wound was firſt given, then it is manſlaughter. *Hale's Pl.* 42.

5. And an officer who kills one that reſiſts him in the execution of his office, and even a private perſon that kills one who feloniouſly aſſaults him in the highway, may juſtify the fact, without ever giving back at all. 1 *Haw.* 75.

6. But if a perſon upon malice *prepenſe* ſtrike another, and then fly to the wall, and there in his own defence kills the other, this is murder. *Hale's Pl.* 42.

7. Hereof there can be no acceſſaries, either before or after the act, becauſe it is not done with a felonious intent, but upon inevitable neceſſity. 3 *Inſt.* 56. Acceſſaries.

8. If a man eſcape, that hath killed another in his own defence, the town ſhall be amerced. 2 *Inſt.* 315. Eſcape.

9. A perſon guilty hereof is not bailable by juſtices of the peace; but they muſt commit him till the aſſizes. 1 *Haw.* 76. Bail.

But otherwiſe it is, if he is taken only on ſlight ſuſpicion. 2 *Haw.* 105.

10. Lord *Coke* (2 *Inſt.* 316.) ſays, that the juſtices of the peace cannot take an indictment of killing a man *ſe defendendo*; becauſe their commiſſion is not general, as is that of the juſtices of gaol delivery, but limited: But lord *Hale* (2 *H. H.* 46.) holds the contrary. Power of juſtices of the peace.

11. A perſon convicted hereof, ſhall not be diſcharged out of priſon but upon bail, and ſhall forfeit all his goods, altho' the cauſe was inevitable. And this, becauſe of the great regard which the law hath for the life of man; and alſo; by reaſon that the law intends it had a beginning upon an unlawful cauſe: for quarrels are not preſumed to grow without ſome wrongs in words or deeds, and ſo malice on both ſides. But he ſhall have his pardon out of the chancery of courſe. 3 *Inſt.* 56. 1 *Haw.* 76. Forfeiture.

Flight. 12. If a man be indicted for homicide *ſe defendendo*, and is found not guilty, yet if it be found that he fled for the ſame, he ſhall forfeit his goods for ſuch flight, in not ſtanding to the law of the land. 1 *H. H.* 493.

IV. Manſlaughter.

Manſlaughter, what. 1. By manſlaughter is to be underſtood ſuch killing of a man as happens either on a ſudden quarrel, or in the commiſſion of an unlawful act, without any deliberate intention of doing any miſchief at all. 1 *Haw.* 76.

Without malice. 2. There is no difference between murder and manſlaughter, but that murder is upon malice forethought, and manſlaughter upon a ſudden occaſion. As if two meet together, and ſtriving for the wall, the one kill the other, this is manſlaughter and felony. And ſo it is, if they had upon that ſudden occaſion gone into the field and fought, and the one had killed the other, this had been but manſlaughter, and no murder; becauſe all that followed was but a continuance of the firſt ſudden occaſion, and the blood was never cooled, till the blow was given. 3 *Inſt.* 55.

Acceſſaries. 3. There can be no acceſſaries to this offence before the fact, becauſe it muſt be done without premeditation. 1 *Haw.* 76.

But there may be acceſſaries after the fact. 3 *Inſt.* 55.

Bail. 4. This offence is not bailable by juſtices of the peace. 3 *Ed.* 1. *c.* 15.

Clergy. 5. It is within the benefit of clergy; but the offender ſhall forfeit as in other felonies. 2 *H. H.* 344.

Stabbing. 6. But there is one kind of manſlaughter, which by the ſtatute of the 1 *J. c.* 8. is excluded the benefit of clergy; *viz.* He who ſhall ſtab or thruſt any perſon that hath not then any weapon drawn, or hath not then ſtricken firſt, ſo as the perſon ſo ſtabbed or thruſt ſhall die thereof in ſix months, altho' it cannot be proved that the ſame was done of malice forethought, ſhall be guilty of felony without benefit of clergy.

V. Murder.

Murder, what. 1. Murder is, when a man of ſound memory, and of the age of diſcretion, unlawfully killeth any perſon under the king's peace, with malice forethought, either expreſſed by

by the party, or implied by law; ſo as the party wounded or hurt, die of the wound or hurt, within a year and a day. 3 *Inſt.* 47.

2. By *malice expreſſed* is meant a deliberate intention of doing any bodily harm to another, whereunto by law a perſon is not authorized. 1 *H. H.* 154. Caſes of murder.

And the evidences of ſuch a malice muſt ariſe from external circumſtances diſcovering that inward intention; as lying in wait, menacings antecedent, former grudges, deliberate compaſſings, and the like; which are various, according to variety of circumſtances. 1 *H. H.* 451.

3. *Malice implied* is in ſeveral caſes; as when one voluntarily kills another, without any provocation; for in this caſe the law preſumes it to be malicious, and that he is a publick enemy of mankind. 1 *H. H.* 455, 456.

4. Poiſoning alſo implies malice, becauſe it is an act of deliberation. 1 *H. H.* 455.

5. Alſo when an officer is killed in the execution of his office, it is murder, and the law implies malice. 1 *H. H.* 457.

6. Alſo where a priſoner dieth by dureſs of the gaoler, the law implies malice, by reaſon of the cruelty. 3 *Inſt.* 52.

7. And in general, any formed deſign of doing miſchief may be called malice, and therefore not ſuch killing only as proceeds from premeditated hatred or revenge againſt the perſon killed, but alſo in many other caſes, ſuch as is accompanied with thoſe circumſtances that ſhew the heart to be perverſely wicked, is adjudged to be of malice *prepenſe*, and conſequently murder. 2 *Haw.* 80. *Strange* 766.

For when the law makes uſe of the term *malice aforethought*, as deſcriptive of the crime of murder, it is not to be underſtood in that narrow reſtrained ſenſe to which the modern uſe of the word *malice* is apt to lead one, *a principle of malevolence to particulars*; for the law by the term *malice (malitia)* in this inſtance meaneth, that the fact hath been attended with ſuch circumſtances, as are the ordinary ſymptoms of a wicked heart, regardleſs of ſocial duty, and fatally bent upon miſchief. *Foſt.* 256, 7.

8. And wherever it appears that a man killed another, it ſhall be intended *prima facie* that he did it maliciouſly, unleſs he can make out the contrary, by ſhewing that he did it on a ſudden provocation, or the like. 1 *Haw.* 82.

9. Alſo wherever a perſon in cool blood, by way of revenge, beats another in ſuch a manner that he afterwards dies thereof, he is guilty of murder, however unwilling he might have been to have gone ſo far. 1 *Haw.* 83.

10. And it ſeems to be agreed, that no breach of a man's word or promiſe, no treſpaſs either to lands or goods, no affront by bare words or geſtures, however falſe or malicious it may be, and aggravated with the moſt provoking circumſtances, will excuſe him from being guilty of murder, who is ſo far tranſported thereby, as immediately to attack the perſon who offends him, in ſuch a manner as manifeſtly indangers his life, without giving him time to put himſelf upon his guard, if he kills him in purſuance of ſuch an aſſault, whether the perſon ſlain did at all fight in his defence or not. 1 *Haw.* 82.

11. If a man by harſh and unkind uſage put another into ſuch a paſſion of grief or fear, that the party either die ſuddenly, or contract ſome diſeaſe whereof he dies, though this may be murder or manſlaughter in the ſight of God, yet in a human judicature it cannot come under the judgment of felony, becauſe no external act of violence was offered, whereof the law can take notice. 1 *H. H.* 429.

12. If two fall out upon a ſudden occaſion, and agree to fight in ſuch a field, and each of them go and fetch their weapon, and go into the field, and therein fight, and the one killeth the other, this is no malice prepenſed; for the fetching of the weapon, and going into the field, is but a continuance of the ſudden falling out, and the blood was never cooled. But if there were deliberation, as that they meet the next day, nay though it were the ſame day, if there were ſuch a competent diſtance of time, that in common preſumption, they had time of deliberation, then it is murder. 3 *Inſt.* 51. 1 *H. H.* 453.

13. And the law ſo far abhors all duelling in cold blood, that not only the principal who actually kills the other, but alſo his ſeconds, are guilty of murder, whether they fought or not. And it is holden, that the ſeconds of the party ſlain are likewiſe guilty as acceſſaries. 1 *Haw.* 82.

14. If a phyſician or ſurgeon gives a perſon a potion, without any intent of doing him any bodily harm, but with intent to cure or prevent a diſeaſe, and contrary to the

the phyſician or ſurgeon's expectation it kills him, this is no homicide. And lord *Hale* ſays, he holds their opinion, to be erroneous, who think that if he be no licenſed ſurgeon or phyſician, that occaſioneth this miſchance, that then it is felony. Theſe opinions (he ſays) may caution ignorant people not to be too buſy in this kind with tampering with phyſick, but are no ſafe rule for a judge or jury to go by. 1 *H. H.* 429.

15. But if a woman be with child, and any gives her a potion to deſtroy the child within her, and ſhe take it, and it works ſo ſtrongly that it kills her, this is murder; for it was not given her to cure her of a diſeaſe, but unlawfully to deſtroy the child within her; and therefore he that gives her a potion to this end, muſt take the hazard, and if it kills the mother it is murder. 1 *H. H.* 430.

16. Alſo if a woman be quick with child, and by a potion or otherwiſe, killeth it in her womb; or if a man beat her, whereby the child dieth in her body, and ſhe is delivered of a dead child, this is a great miſpriſion, but no murder: but if the child be born alive, and dieth of the potion, battery, or other cauſe, this is murder. 3 *Inſt.* 50.

Lord *Hale* ſays, that in this caſe it cannot legally be known, whether the child were killed or not; and that if the child die, after it is born and baptized, of the ſtroke given to the mother, yet it is not homicide. 1 *H. H.* 433. And Mr. *Dalton* ſays, whether it die with her body, or ſhortly after her delivery, it maketh no difference. *Dalt.* 332. But Mr. *Hawkins* ſays, that (in this latter caſe) it ſeems clearly to be murder, notwithſtanding ſome opinions to the contrary. 1 *Haw.* 80.

17. Alſo it ſeems agreed, that where one counſels a woman to kill her child when it ſhall be born, who afterwards doth kill it in purſuance of ſuch advice, he is an acceſſary to the murder. 1 *Haw.* 80.

18. By the 21 *J. c.* 27. If a woman be delivered of a baſtard child, and ſhe endeavour privately, either by drowning or ſecret burying thereof, or any other way, either by herſelf, or the procuring of others, ſo conceal the death thereof, as that it may not come to light, whether it were born alive or not, but be concealed; ſhe ſhall ſuffer death as in caſe of murder, except ſhe can prove by one witneſs that it was born dead.

19. Lord *Hale* ſays, if a man have a beaſt, as a bull cow, horſe, or dog, uſed to hurt people, and he hath notice thereof, and it doth any body hurt, he is chargeable with an action for it:

If he have no particular notice that it did any ſuch thing before, yet if it is *feræ naturæ*, as a lion, a bear a wolf, yea an ape, or a monkey, if it get looſe and do harm to any perſon, the owner is liable to an action for the damage:

If he have notice of the quality of any ſuch his beaſt, and uſe all due diligence to keep him up, yet he breaks looſe and kills a man. this is no felony in the owner, but the beaſt is a deodand:

But if he did not uſe that due diligence, but through negligence the beaſt goes abroad, after warning or notice of his condition, and kills a man, he thinks it is manſlaughter in the owner:

But if he did purpoſely let him looſe or wander abroad, with deſign to do miſchief, nay though it were with deſign only to fright people and make ſport, and it kills a man, it is murder in the owner. 1 *H. H.* 431.

Perſons preſent when murder is committed.

20. They that are preſent when any man is ſlain, and do not their beſt endeavour to apprehend the murderer or manſlayer, ſhall be fined and impriſoned. 3 *Inſt.* 53.

Eſcape.

21. If a murder be committed in the day time, in a town not incloſed, and the murderer eſcape, the townſhip ſhall be amerced: but if incloſed, whether the murder be in the night or day, the town ſhall be amerced. 3 *Inſt.* 53.

Where the ſtroke is in one county, and the death in another.

22. Where any perſon ſhall be feloniouſly ſtricken or poiſoned in one county, and die in another county; the offender may be indicted in the county where the party dies, before the coroner, juſtices of the peace, or other juſtices. 2 & 3 *Ed.* 6. *c.* 24. *ſ.* 2.

Where the principal committeth the offence in one county, and the acceſſary in another.

23. Where a murder is committed in one county, and a perſon is acceſſary in another county, he may be indicted in the county where he was acceſſary, on certificate of the conviction of the principal in the county where he committed the murder. 2 & 3 *Ed.* 6. *c.* 24. *ſ.* 4.

Where the ſtroke is in England, and the death out of England; and vice verſa.

24. If any perſon be feloniouſly ſtricken or poiſoned upon the ſea, or out of *England*, and ſhall die of the ſame in *England*; or ſhall be feloniouſly ſtricken or poiſoned in *England*, and ſhall die of the ſame on the ſea, or out of *England*; the offenders and acceſſaries may be indicted in the county where any ſuch death, ſtroke, or poiſoning

ſhall

ſhall happen, before the coroner, juſtices of the peace, or other juſtices; and the judges of aſſize, or any ſuperior court, to which the indictment ſhall be removed, ſhall proceed thereon accordingly. 2 *G.* 2. *c.* 21.

Trial, when.

25. If any man be ſlain or murdered, and the ſlayers, murderers, and acceſſaries be indicted, they may be tried at any time within the year, and not tarry the year and day for an appeal: but if upon trial they are acquitted, they ſhall not be ſuffered to go at large, but be committed or bailed, till the year and day be paſt: and an appeal may be brought, notwithſtanding ſuch acquittal on indictment, if he hath not had his clergy. 3 *H.* 7. *c.* 1.

Judgment.

26. Sentence, in caſe of murder, ſhall be pronounced in open court immediately after conviction, unleſs the court ſhall ſee reaſonable cauſe for poſtponing the ſame; in which ſhall be expreſſed not only the uſual judgment of death, but alſo the time appointed for execution, and the marks of imfamy directed for ſuch offenders. 25 *G.* 2. *c.* 37. *ſ.* 3.

How to be demeaned after judgment.

27. And after conviction and judgment, the gaoler ſhall confine the priſoner to ſome cell, or other proper and ſafe place in the priſon, apart from the other priſoners; and no perſon, except the gaoler, or his ſervants, ſhall have acceſs to him, without a licence from the judge, ſheriff, or under ſheriff. But if the judge ſhall ſee cauſe to reſpite the execution, he may, during the time of ſuch ſtay, relax, or releaſe, by licence under his hand, any or all of the reſtraints or regulations before directed to be obſerved by the gaoler. 25 *G.* 2. *c.* 37. *ſ.* 6, 7.

And after ſentence, and until execution, the offender ſhall be fed with bread and water only (except in caſe of receiving the ſacrament; or of any violent ſickneſs or wound, in which caſe ſome known phyſician, ſurgeon, or apothecary may be admitted by the gaoler to adminiſter neceſſaries, his name and place of abode being firſt entred in the books of ſuch priſon). And if the gaolar ſhall offend againſt, or neglect to put in execution, any of the ſaid directions; he ſhall forfeit his office, and be fined 20*l.* and impriſoned till paid. *id. ſ.* 8.

Execution.

28. The execution of perſons found guilty of wilful murder, ſhall be on the day next but one after ſentence paſſed, unleſs it be *ſunday*, and in that caſe on the *monday* following. 25 *G.* 2. *c.* 37. *ſ.* 1.

But if there ſhall appear reaſonable cauſe, the judge after ſentence pronounced, may ſtay the execution at his diſcretion. *id. ſ.* 4.

Reſcue. 29. And if any perſon ſhall by force ſet at liberty or reſcue, or attempt to ſet at liberty, or reſcue, any perſon out of priſon, committed for, or found guilty of murder; or reſcue, or attempt to reſcue any ſuch perſon going to, or during execution; he ſhall be guilty of felony without benefit of clergy. 25 *G.* 2. *c.* 37. *ſ.* 9.

Body not to be buried. 30. The body, if in *London* or *Middleſex*, ſhall be immediately conveyed by the ſheriff, to the ſurgeons hall, or ſuch other place as the ſurgeons company ſhall appoint, to be by them diſſected and anatomized; and if elſewhere, ſhall be delivered to ſuch ſurgeon as the judge ſhall direct, for the purpoſe aforeſaid. 25 *G.* 2. *c.* 37. *ſ.* 2.

And the judge may direct the body to be hung in chains, or anatomized; but in no caſe whatſoever to be buried, unleſs after the ſame ſhall have been diſſected and anatomized. *ſ.* 5.

At a meeting of the judges to conſider of this act, there was ſome doubt whether hanging in chains might ever be made part of the ſentence; but on debate it was agreed by nine judges, that in all caſes within the act, the judgment for diſſection and anatomizing only ſhould be part of the ſentence: and if it ſhould be thought adviſeable, the judge might afterwards direct the hanging in chains by ſpecial order to the ſheriff, purſuant to the power given by this clauſe. *Foſt.* 107.

Reſcuing the body. 31. And if after execution, any perſon ſhall by force reſcue, or attempt to reſcue the body; he ſhall be guilty of felony, and tranſported for ſeven years. 25 *G.* 2. *c.* 37. *ſ.* 10.

How far the acceſſary ſhall have his clergy. 32. The principal in murder is ouſted of clergy in all caſes, and the acceſſary before is alſo ouſted of clergy in all caſes, but the acceſſary after is in no caſe ouſted of clergy. 2 *H. H.* 344.

Pardon. 33. All voluntary murders, wilful poiſonings, and all ſlaughters of forethought felony, are excepted out of the general pardon of the 20 *G.* 2. *c.* 52.

Navy. 34. All murders committed by any perſon in the fleet ſhall be puniſhed with death, by the ſentence of a court marſhal. 22 *G.* 2. *c.* 33. *art.* 28.

VI. Self-

VI. Self-Murder.

1. *A felo de ſe*, or felon of himſelf, is a perſon, who being of ſound mind, and of the age of diſcretion, voluntarily killeth himſelf. 3 *Inſt.* 54. 1 *H. H.* 411. Felo de ſe.

2. If a man give himſelf a wound, intending to be *felo de ſe*, and dieth not within the year and day after the wound, he is not *felo de ſe*. 3 Inſt. 54. Year and day.

3. Mr. *Hawkins* ſpeaks with ſome warmth againſt an unaccountable notion (as he calls it) which hath prevailed of late, that every one who kills himſelf muſt be *non compos* of courſe; becauſe it is ſaid to be impoſſible, that a man in his ſenſes ſhould do a thing ſo contrary to nature, and all ſenſe and reaſon. But he argues, that if this doctrine were allowable, it might be applied in excuſe of many other crimes as well as this; as for inſtance that of a mother murdering her child, which is alſo againſt nature and reaſon: and this conſideration, inſtead of being the higheſt aggravation of a crime, would make it no crime at all; for it is certain a perſon *non compos mentis* can be guilty of no crime. 1 *Haw.* 67. Non compos.

And lord *Hale* ſays, it is not every melancholy or hypochondriacal diſtemper, that denominates a man *non compos*, for there are few who commit this offence, but are under ſuch infirmities; but it muſt be ſuch an alienation of mind, as renders a perſon to be a madman, or frantick, or deſtitute of the uſe of reaſon, which will denominate him *non compos*. 1 H. H. 412.

4. The offender herein doth incur a forfeiture of goods and chattels, but not of lands; for no man can forfeit his land, without an attainder by courſe of law. 3 *Inſt.* 54. Forfeiture.

Nor ſhall his goods be forfeited, until it be lawfully found by the oath of 12 men; and this belongs to the coroner to enquire of, upon view of the body. And if the body cannot be viewed, the juſtices in ſeſſions may inquire thereof; for they have power by their commiſſion to inquire of all felonies: and a preſentment thereof found before them, intitles the king to the forfeiture. 3 *Inſt.* 54, 55. *Dalt. c.* 144.

But nevertheleſs, the forfeiture ſhall relate to the time of the wound given, and not to the time of the death, or of the inquiſition. 3 *Inſt.* 55. *Dalt. c.* 144. 1 *Hale's Pl.* 29. 1 *Haw.* 68.

But

But lord *Hale*, in his hiſtory of the pleas of the crown, ſeemeth to doubt, whether it ſhall not relate to the time of the death only, and not to the time of the wound given. 1 *H. H.* 414.

Corruption of blood.

5. Nor doth the offence work any corruption of blood, or loſs of dower. 1 *Haw.* 68.

Burial.

6. By the rubrick in the common prayer, before the burial office (confirmed by act of parliament, 13 & 14 *C.* 2. *c.* 4.) perſons who have laid violent hands upon themſelves, ſhall not have that office uſed at their interment.

Hops. See Exciſe.

Horſes.

I. Stealing of horſes.
II. Buying of ſtolen horſes.
III. Killing or maiming horſes in the night.
IV. Putting ſtoned horſes on commons.
V. Putting ſcabbed horſes on commons.

I. Stealing of horſes.

BY the 1 *Ed.* 6. *c.* 12. *ſ.* 10. No perſon convicted for feloniouſly ſtealing of horſes, geldings, or mares, ſhall be admitted to enjoy the privilege of clergy.

And by the 2 & 3 *Ed.* 6. *c.* 33. Whereas there hath been ſome doubt upon the foregoing clauſe, whether a perſon convicted for feloniouſly ſtealing of one horſe, gelding, or mare, ought to be admitted to enjoy the privilege of clergy, it is declared and enacted, that all and ſingular perſon and perſons feloniouſly taking or ſtealing any horſe, gelding, or mare, ſhall not be admitted to enjoy the privilege of clergy, but ſhall be put from the ſame.

The reaſon of which doubt is obvious; becauſe a penal ſtatute (and eſpecially where life is concerned) ought not to be extended beyond the expreſs words thereof, but to be taken ſtrictly in favour of the ſubject.

If

If they be ſtolen out of the ſtable or other curtilage of the dwelling houſe, in the night time, it falls under the denomination of *Burglary*; if in the day time, it falls under the denomination of *Larceny from the houſe:* And in either caſe, there is a reward of 40 l. for convicting an offender, and an exemption from offices; as is ſet forth at large under the reſpective titles of *Burglary* and *Larceny*.

II. Buying of ſtolen horſes.

By the 2 & 3 *P. & M. c.* 7. and 31 *El. c.* 12. it is enacted as follows:

1. The keeper of every fair and market ſhall yearly appoint a certain ſpecial and open place, where horſes ſhall be ſold in any fair or market overt. Horſe fair.

2. And ſhall appoint one or more perſons to take toll there, and to keep the ſame place from ten in the forenoon till ſun-ſet. Toll taker.

3. And the ſale or exchange in any fair or market overt, of any ſtolen horſe, ſhall not alter the property, unleſs the ſame ſhall be, in the time of the ſaid fair or market, openly ridden, led, walked, driven, or kept ſtanding, for one hour together at leaſt, between ten of the clock and ſun-ſet, in the open place of the fair or market, wherein horſes are commonly uſed to be ſold, and not within any houſe, yard, backſide, or other privy or ſecret place. Horſe to be ſhewed one hour.

4. Nor unleſs all the parties to the bargin ſhall come together, and bring the horſe to the open place appointed for the toll taker, or for the book keeper where no toll is due. Seller and buyer to go to the toll taker.

5. Nor unleſs ſuch toll taker there, or (where no toll is paid) the book keeper or chief officer of the fair or market, ſhall take upon him perfect knowledge of the ſeller, and of his true chriſtian name and ſurname and place of abode, and ſhall enter all the ſame his knowledge in a book to be kept for that purpoſe, or elſe that the ſeller ſhall bring to the toll taker, or other officer aforeſaid, one credible perſon, that ſhall teſtify that he knoweth the ſeller, and his true name, ſurname, miſtery, and dwelling place, and there enter the ſame, and alſo the name, ſurname, myſtery, and dwelling place of him that ſo avoucheth his knowledge. Sale to be entred.

6. Nor unleſs he alſo cauſe to be entered, the very true price. And the price.

7. And alſo the colour, and one ſpecial mark at leaſt. And marks.

Toll to be paid.

8. And alſo the buyer to pay the toll, if any is due; if not, then to give 1 d. for the entry.

Certificate of entry.

9. Which done, the perſon entring the ſame ſhall give to the buyer requiring and paying 2 d. for the ſame, a note in writing of all the contents of ſuch entry ſubſcribed with his hand.

Penalties.

10. Every perſon offending in any of the premiſſes ſhall forfeit 5 l. half to the king, and half to him that ſhall ſue before the juſtices in ſeſſions, or in any ordinary court of record; and the ſale ſhall be void: and the owner may ſeize and take his horſe again, or have an action of detinue or replevin for the ſame.

Caſe where the horſe ſhall have been duly entred.

11. And if any horſe ſhall be ſtolen, and after ſhall be ſold in open fair or market, and the ſale ſhall be uſed in all points as aforeſaid, yet nevertheleſs ſuch ſale in ſix months after the felony done, ſhall not take away the owner's property, ſo as claim be made in ſix months, where the horſe ſhall be found; before the mayor, if in a town corporate, or elſe before a juſtice near the place where found, and ſo as proof be made before ſuch magiſtrate in 40 days next enſuing by two witneſſes, that the property of ſuch horſe was in the party claiming, and was ſtolen from him within ſix months next before ſuch claim; but the party from whom the ſame was ſtolen, may at all times after, notwithſtanding ſuch ſale, take again the ſaid horſe, on payment, or readineſs to offer to the party who hath poſſeſſion, ſo much as he ſhall ſwear before ſuch magiſtrate, that he paid for the ſame.

III. Killing, or maiming horſes in the night.

Killing.

1. By the 22 & 23 *C.* 2. *c.* 7. Where any perſon ſhall in the night time maliciouſly kill or deſtroy any horſes; he ſhall be guilty of felony, and may be tranſported, by three juſtices in ſeſſions, for ſeven years.

Maiming.

2. And if any perſon ſhall in the night time maliciouſly wound or hurt any horſes; he ſhall forfeit to the party grieved treble damages, to be recovered by action at law, or before three juſtices.

IV. Pttiung ſtoned horſes on commons.

Size.

1. No perſon ſhall put in any foreſt, chaſe, moor, heath, common, or waſte (where mares or fillies are uſed to be kept) any ſtoned horſe above the age of two years, not being 15 hands high, within the ſhires and territories of

Norfolk, *Suffolk*, *Cambridge*, *Buckingham*, *Huntingdon*, *Eſſex*, *Kent*, *South-Hampſhire*, *North-Wiltſhire*, *Oxford*, *Berkſhire*, *Worceſter*, *Gloceſter*, *Somerſet*, *North-Wales*, *South-Wales*, *Bedford*, *Warwick*, *Northampton*, *Yorkſhire*, *Cheſhire*, *Staffordſhire*, *Lancaſhire*, *Salop*, *Leiceſter*, *Hereford*, *and Lincoln*; nor under 14 hands in any other county (except *Cornwal*, 21 *J.* *c.* 28. *ſ.* 12.), on pain of forfeiting the ſame. 32 *H.* 8. *c.* 13. *ſ.* 2, 10.

But this ſhall not extend to the *marſhes* in the counties of *Cambridge*, *Huntington*, *Suffolk*, *Northampton*, *Lincoln*, and *Norfolk*; provided that the horſes be of 13 hands. 8 *El.* *c.* 8. *ſ.* 3.

Alſo nothing herein ſhall extend to any ſtoned horſe, that ſhall happen once in a year to break out of any paſture into ſuch common, ſo that he do not ſtay there above four days after notice given at the dwelling houſe of the owner, or after publication thereof on a *Sunday* or other feſtival, in the pariſh church where the owner or poſſeſſor of ſuch horſe dwelleth. 32 *H.* 8. *c.* 13. *ſ.* 5.

2. And any perſon may ſeize any ſuch horſe ſo being under ſize, in manner following: He ſhall go to the keeper of ſuch foreſt, or (out of ſuch foreſt) to the conſtable of the next town; and require him to go with him, to bring ſuch horſe to the next pound; and there to be meaſured by ſuch officer, in the preſence of three other honeſt men to be appointed by the officer; and if he ſhall be found contrary to what is above expreſſed, ſuch perſon may take him for his own uſe. 32 *H.* 8. *c.* 13. *ſ.* 3. Seizing the ſame.

And ſuch keeper, or conſtable, or other of the three perſons ſhall refuſe to do as is aforeſaid; he ſhall forfeit 40s. *ſ.* 4.

3. And all ſuch commons and other places ſhall, within 15 days after *Michaelmas* yearly, be driven by the owners and keepers, or conſtables, reſpectively, on pain of 40s. and they may alſo drive the ſame at any other time when they ſhall think meet. 32 *H.* 8. *c.* 13. *ſ.* 6. Driving the common.

And if in any of the ſaid drifts, there ſhall be found any mare, filly, fole, or gelding, that ſhall then be thought not able, nor like to grow to be able to bear foles of reaſonable ſtature, or to do profitable labours, by the diſcretion of the drivers, or of the more number of them; they may kill and bury them. *ſ.* 7.

4. All

Penalties.

4. All which ſaid forfeitures ſhall be half to the king, ane half to him that ſhall ſue: and the juſtices in ſeſſions, and ſtewards of leets, may inquire thereof; and the ſteward ſhall certify his preſentments to the next ſeſſions. 32 *H.* 8. *c.* 13. *ſ.* 8.

V. Putting ſcabbed horſes on commons.

Scabbed.

No perſon ſhall have, or put to paſture, any horſe, gelding, or mare, infected with ſcab or mange, in any common, or common fields; on pain of 10 s. which offence ſhall be inquirable in the leet, as other common annoyances be, and the forfeitures, ſhall be to the lord of the leet. 32 *H.* 8. *c.* 13. *ſ.* 9.

Houſes (duty on). See **Windows.**
Houſebreaking. See **Burglary and Larceny.**

Houſe of correction.

Building or repairing houſes of correction.

1. BY the 7 *J.* *c.* 4. It was enacted, that before *Michaelmas* 1611. there ſhould be built or provided within every county, one or more fit and convenient houſes of correction, with convenient backſide thereunto adjoining, together with mills, turns, cards, and ſuch like neceſſary implements, to ſet rogues, vagabonds, or other idle, vagrant, and diſorderly perſons on work; which houſes were to be purchaſed, conveyed, or aſſured unto ſuch perſons, as by the juſtices in ſeſſions ſhould be directed, upon truſt that the ſame ſhould be imployed for the keeping, correcting, and ſetting to work the ſaid rogues, vagabonds, or ſturdy beggars, and other idle and diſorderly perſons. *ſ.* 2.

And by the 17 *G.* 2. *c.* 5. On preſentment of the grand jury, at the aſſize, great ſeſſions, or general gaol delivery, held for any county or liberty (or at the general ſeſſions, or general quarter ſeſſions of the peace, where there ſhall be no aſſizes, great ſeſſion, or general gaol delivery held, 14 *G.* 2. *c.* 33. *ſ.* 2.) that there is no houſe of correction, and that it will be neceſſary to provide one or more; or that the houſes of correction already provided are not ſufficient or convenient, or want to be enarged;

larged; the justices in sessions shall have power to build or enlarge one or more fit houses of correction, or to buy or hire houses for that purpose, with convenient backsides or outlets thereto adjoining, or to purchase land, and to erect such house or houses upon part thereof, and to lay out the rest of such lands for such backsides or outlets: and to conclude and agree upon raising such sums of money, as on examination of able and sufficient workmen, or others, shall appear to be necessary for that purpose: And if houses or lands are to be purchased, they shall be conveyed to such persons as the said justices in sessions shall direct, in trust and for the uses and purposes aforesaid. *s.* 30.

Appointing the master.

2. And the justices in sessions shall appoint at their will and pleasure fit persons to be governors or masters of such houses so to be provided. 7 *J.* *c.* 4. *s.* 4. 17 *G.* 2. *c.* 5. *s.* 31.

His salary.

3. And for the said master or governor's travel and care to be had in the said service, and for the relieving of such as shall be weak and sick in his custody, the justices in sessions shall appoint such sums yearly as they shall think meet, to be paid quarterly beforehand by the treasurer (the said master or governor giving sufficient security for the continuance and performance of the said service). 7 *J.* *c.* 4. *s.* 6. 17 *G.* 2. *c.* 5. *s.* 33.

Which sums shall be paid out of the general county rate, by the 12 *G.* 2. *c.* 29.

Fitting up the house.

4. And the justices in sessions shall take care, that the houses of correction (except those erected or maintained by particular founders) shall be duly fitted up and supplied with implements, materials, and furniture, for keeping relieving, employing, and correcting all idle and disorderly persons, rogues, vagabonds, incorrigible rogues, and others, who shall be sent to, confined or continued in the same; and shall make such orders and regulations as they shall think fit, for the better governing and regulating the said houses, and for employing, relieving, and punishing the persons therein, or for sending them to or from thence; which orders shall not be removed by any certiorari. 17 *G.* 2. *c.* 5. *s.* 31.

Commitment thither.

5. And whereas doubts may arise, where authority is given to any justice or justices, to commit offenders to the house of correction, for offences cognizable before them out of sessions, how long offenders may be there detained, and in what manner treated, where the time and manner or their punishment is not by law expressly limited; it is enacted,

enacted, that where any offenders ſhall be committed as aforeſaid, by virtue of any law in being or to be made, and the time and manner of their puniſhment is not expreſly limited, the ſaid juſtice or juſtices ſhall commit ſuch offenders to the houſe of correction, there to be kept to hard labour until the next general or quarter ſeſſions, or until diſcharged by due courſe of law: And two juſtices (of which the juſtice who committed him to be one) may diſcharge the ſaid offender before the ſeſſions, if they ſee cauſe; and if he ſhall not be ſo diſcharged, the ſaid ſeſſions may either diſcharge him, or continue him further not exceeding three months. 17 *G.* 2. *c.* 5. *ſ.* 32.

And where any perſon liable by law to be committed to the houſe of correction, ſhall be apprehended within any liberty, city, or town corporate, whoſe inhabitants are contributory to the houſe of correction of the county, the juſtices of ſuch liberty may commit ſuch perſon to the houſe of correction of the county. 15 *G.* 2. *c.* 24.

The maſter's duty.

6. The ſaid maſter or governor ſhall have power to ſet ſuch rogues, vagabonds, idle and diſorderly perſons, as ſhall be brought or ſent to the ſaid houſe, to work and labour (being able), for ſuch time as they ſhall continue therein, and to puniſh them by putting fetters of gives upon them, and by moderate whipping: And the ſaid rogues, vagabonds, and idle perſons, during ſuch time as they ſhall continue in the ſaid houſe of correction, ſhall in no ſort be chargeable to the country for any allowance, either at their bringing in, or going forth, or during their abode there, but ſhall have ſuch and ſo much allowance as they ſhall deſerve by their own labour and work. 7 *J.* *c.* 4. *ſ.* 4.

And if the maſter ſhall not, at every quarter ſeſſions, yield a true account of all ſuch perſons as have been committed to his cuſtody: or if any perſon committed to his cuſtody, ſhall be troubleſome to the country, by going abroad; or otherwiſe ſhall eſcape away from the houſe of correction, before he ſhall be from thence lawfully delivered; then the ſaid juſtices ſhall ſet down ſuch fines and penalties upon the ſaid maſter or governor, as they ſhall think fit; and all fines and penalties ſhall be paid to the treaſurer, and accounted for by him. 7 *J.* *c.* 4. *ſ.* 9.

And two juſtices within the reſpective hundreds, diviſions, or juriſdictions, where there ſhall be any houſe of correction, or any two juſtices appointed by the ſeſſions, ſhall viſit the ſame twice a year, or oftner if need be, and

and report the ſtate thereof to the next ſeſſions. And if the governors thereof ſhall not ſet or keep the ſaid idle and diſorderly perſons, rogues, vagabonds, and incorrigible rogues, to hard labour, and puniſh and correct them according to the directions of their warrants of commitment, or ſhall otherwiſe miſbehave themſelves, the ſaid juſtices in ſeſſions ſhall fine them, as by the 7 *J.* *c.* 4. the fines to be paid to the treaſurer, and accounted for by him as part of the county ſtock. 17 *G.* 2. *c.* 5. *ſ.* 31.

Removing the maſter.

7. The juſtices in ſeſſions may remove the ſaid governor or maſter; and if any perſon removed by order of ſeſſions, ſhall refuſe or neglect to quit poſſeſſion, for ten days after notice given him in writing by the clerk of the peace, any two juſtices (on producing to them ſuch order of ſeſſions, or an atteſted copy thereof, and on oath of one witneſs of ſuch notice having been given, and of his having refuſed or neglected to quit poſſeſſion) may by their warrant direct the ſheriff to remove him, who ſhall thereupon clear the poſſeſſion as in caſe of a writ of *habere facias poſſeſſionem*. 17 G. 2. c. 5. ſ. 31.

Spirituous liquors not to be drank therein.

8. By the 24 *G.* 2. *c.* 40. No ſpirituous liquors ſhall be ſold or uſed in any houſe of correction; as may be ſeen more at large, under the article relating to ſpirituous liquors, in the title Exciſe.

Expences of the whole.

9. And to defray the expences of erecting, purchaſing, hiring, enlarging, altering, and repairing houſes of correction, and of purchaſing land to erect them upon, and for backſides and outlets, and of fitting up and furniſhing ſuch houſes, and of ſending perſons to and from the ſame, and imploying them there, the juſtices in ſeſſions may cauſe ſuch ſums as ſhall be neceſſary, to be raiſed in the ſame manner as rates are to be raiſed by the 12 *G.* 2. *c.* 29. 17 *G.* 2. *c.* 5. *ſ.* 33.

General form of a commitment to the house of correction.

Westmorland. { *J. P.* esquire, one of the justices of our lord the king assigned to keep the peace within the said county, to the constable of———in the said county, and to the keeper of the house of correction at———in the said county.

THESE *are to command you the said constable in his said majesty's name forthwith to convey and deliver into the custody of the said keeper of the said house of correction the body of* A. O. *being charged before me* [or, *convicted before me*, or otherwise as the case shall be: And here set forth the offence] *And you the said keeper are hereby required to receive the said* A. O. *into your custody in the said house of correction, and him there safely to keep, until*——[or, *for the space of*———And here set forth the time, and the manner of punishment.] *Herein fail you not. Given under my hand and seal the*———*day of*———*in the*———*year of*———

Hue and cry.

Meaning of the words.

1. LORD *Coke* saith, that hue and cry (called in ancient records *hutesium & clamor* do mean the same thing; for that *huer* in *French* is to hoot or shout, in *English* to cry. 2 *Inst.* 173. 3 *Inst.* 116.

But since it appeareth by the old books (of which also lord *Coke* maketh observation, 2 *Inst.* 173.) that hue and cry was anciently both by horn and by voice, it may seem that these two words are not synonymous, but that this *hutesium* or *hooting* is by the *horn*, and *crying* by the *voice*; with which also accordeth the *French* word *huchet*, which signifieth a huntsman's horn: So that hue and cry in this sense will properly signify a pursuit by horn and by voice. Which kind of pursuit of robbers by blowing a horn, and by making an outcry, is said to be practised also in *Scotland*.

And this blowing of a horn, by way of notice or intelligence, in other caſes as well as in the purſuit of felons, ſeemeth to have been in uſe of very ancient time: for amongſt the laws of *Wihtred* king of *Kent*, in the year 696, this is one; that "if a ſtranger go out of the road, "and neither ſhout nor blow a horn, he ſhall be taken "for a thief."

Hue and cry, what.

2. Hue and cry is the old common law proceſs after felons, and ſuch as have dangerouſly wounded any perſon: And this hath received great countenance and authority by ſeveral acts of parliament. 2 *H. H.* 98.

Watches to be kept.

3. To prevent felonies; In walled towns the gates ſhall be ſhut from ſun ſetting to ſun riſing: and none ſhall lodge without the town, from nine of the clock till day, unleſs his hoſt will anſwer for him. In other towns, watches ſhall be kept: and if a watchman arreſt a night walker, and he diſobey and fly, the watchman may make hue and cry. 13 *Ed.* 1. *ſt.* 2. *c.* 4.

Application to the conſtable.

4. When any felony is committed, or any perſon is grievouſly and dangerouſly wounded, or any perſon aſſaulted and offered to be robbed, either in the day or night; the party grieved, or any other, may reſort to the conſtable of the vill; and, 1. Give him ſuch reaſonable aſſurance thereof, as the nature of the caſe will bear. 2. If he knows the name of him that did it, he muſt tell the conſtable the ſame. 3. If he knows it not, but can deſcribe him, he muſt deſcribe his perſon, or his habit, or his horſe, or ſuch circumſtances as he knows, which may conduce to his diſcovery. 4. If the thing be done in the night, ſo that he knows none of theſe circumſtances, he muſt mention the number of the perſons, or the way they took. 5. If none of all theſe can be diſcovered, as where a robbery, or burglary, or felony is committed in the night, yet they are to acquaint the conſtable with the fact, and deſire him to ſearch in his town for ſuſpected perſons, and to make hue and cry after ſuch as may be probably ſuſpected, as being perſons vagrant in the ſame night; for many circumſtances may *ex poſt facto* be uſeful for diſcovering a malefactor, which cannot be at firſt found. 2 *H. H.* 100, 101. 3 *Inſt.* 116.

Juſtice's warrant.

5. For levying hue and cry, altho' it is a good courſe to have the warrant (A) of a juſtice of the peace, when time will permit, in order to prevent cauſeleſs hue and cry; yet by the frame of the ſtatutes, it is by no means neceſſary, nor is it always convenient; for the felon may eſcape before the warrant be obtained, and hue and cry

was part of the law, before juſtices of the peace were firſt inſtituted. 2 *H. H.* 99.

Conſtable to raiſe the town.

6. And the duty of the conſtable is, to raiſe the power of the town, as well in the night as in the day, for the proſecution of the offender. 3 *Inſt.* 116.

And to ſearch.

7. And upon hue and cry levied againſt any perſon, or where any hue and cry comes to a conſtable, whether the perſon be certain or uncertain, the conſtable may ſearch ſuſpected places within his vill, for the apprehending of the felons. 2 *H. H.* 103.

Breaking doors to ſearch.

8. But tho' he may ſearch ſuſpected places or houſes, yet his entry muſt be by the doors being open; for he cannot break open doors barely to ſearch, unleſs the perſon againſt whom the hue and cry is levied be there, and then it is true he may; therefore in caſe of ſuch a ſearch, the breaking open the door is at his peril, namely, juſtifiable, if he be there; not juſtifiable, if he be not there: but it muſt be always remembred, that in caſe of breaking open a door, there muſt be firſt a notice given to them within of his buſineſs, and a demand of entrance, and a refuſal, before the doors can be broken. 2 *H. H.* 103. 2 *Haw.* 86.

Notice to the next conſtable.

9. If the perſon, againſt whom the hue and cry is raiſed, be not found in the conſtablewick, then the conſtable ſhall give notice to the next conſtable, and he to the next, until the offender be found, or till they come to the ſea ſide. And this was the law before the conqueſt. 3 *Inſt.* 116.

And to the next.

10. And the officer of the town where the felony was done, as alſo every officer to whom the hue and cry ſhall afterwards come, ought to ſend to every other town round about him, and not to one next town only. And in ſuch caſes it is needful to give notice in writing (to the purſuers) of the things ſtolen, and of the colour and marks thereof, as alſo to deſcribe the perſon of the felon, his apparel, horſe, and the like, and which way he is gone, if it may be. *Dalt. c.* 54.

What ſhall be done where the perſon cannot be deſcribed.

11. But if the hue and cry be upon a robbery, burglary, manſlaaghter, or other felony committed, but the perſon that did the fact is neither known nor deſcribable by perſon, clothes or the like, yet ſuch a hue and cry is good, as hath been ſaid, and muſt be purſued, tho' no perſon certain be named or deſcribed. 2 *H. H.* 103.

And therefore in this caſe, all that can be done is, for thoſe that purſue the hue and cry, to take ſuch perſons as

they have probable cauſe to ſuſpect; as for inſtance, ſuch perſons as are vagrants, or ſuch ſuſpicious perſons as come late into their inn or lodgings, and give no reaſonable account where they had been, and the like. *id.*

All perſons ſhall follow the hue and cry.

12. By the ſtatute of the 3 *Ed.* 1. *c.* 9. All ſhall be ready and apparelled, at the commandment and ſummons of ſheriffs (or conſtables, 2 *Inſt.* 171.) and at the cry of the country, to ſue and arreſt felons; on pain of a grievous fine. And if default be found in the lord of the franchiſe, the king ſhall take the franchiſe to himſelf; and if in the ſheriff or other officer, they ſhall have one year's impriſonment, and ſhall make a grievous fine.

And by the ſtatute of the 13 *Ed.* 1. *ſt.* 2. *c.* 1. it is likewiſe enacted, that immediately upon robberies and felonies committed, freſh ſuit ſhall be made, from town to town, and from county to county.

And no hue and cry ſhall be lawful, except it be by horſemen and footmen. 27 *El. c.* 13. *ſ.* 10.

And the life of hue and cry is freſh ſuit. 3 *Inſt.* 117.

Breaking doors to arreſt upon purſuit.

13. If the perſon purſued by hue and cry be in a houſe, and the doors are ſhut, and refuſed to be opened on demand of the conſtable, and notification of his buſineſs, he may break open the doors; and this he may do in any caſe where he may arreſt, though it be only a ſuſpicion of felony; for it is for the king and commonwealth, and therefore a virtual *non omittas* is in the caſe: and the ſame law is, upon a dangerous wound given, and a hue and cry levied upon the oſtender. 2 *H. H.* 102.

Killing in the purſuit.

14. And it ſeems in this caſe, that if he cannot be otherwiſe taken, he may be killed; and the neceſſity excuſeth the conſtable. 2 *H. H.* 102.

Arreſting an innocent perſon.

15. If hue and cry be raiſed againſt a perſon certain for felony, though poſſibly he is innocent; yet the conſtables, and thoſe that follow the hue and cry, may arreſt and impriſon him in the common gaol, or carry him to a juſtice of the peace, to be examined where he was at the time of the felony committed, and the like. 2 *H. H.* 102.

Arreſting a perſon by deſcription.

16. If the hue and cry be not againſt a perſon certain, but by deſcription of his ſtatute, perſon, clothes, horſe, and the like; yet the hue and cry doth juſtify the conſtable or other perſon following it, in apprehending the perſon ſo deſcribed, whether innocent or guilty: for that is his warrant; it is a kind of proceſs that the law allows

of, not uſual in other caſes, namely, to arreſt a perſon by deſcription. 2 *H. H.* 103.

Caſe of arreſting upon hue and cry levied without cauſe.

17. In caſe of hue and cry once raiſed and levied, on ſuppoſal of a felony committed, though in truth there was no felony committed, yet thoſe that purſue hue and cry, may arreſt and proceed, as if ſo be a felony had been really committed.

And therefore the juſtification of an impriſonment by a perſon upon ſuſpicion, and by a perſon (eſpecially a conſtable) upon hue and cry levied, do extremely differ; for in the former caſe, there muſt be a felony averred to be done, and it is iſſuable; but in the latter, to wit, upon hue and cry it need not be averred, but the hue and cry levied upon Information of a felony is ſufficient, though perchance the information were falſe.

And the reaſons hereof are theſe; 1. Becauſe the conſtable cannot examine the truth or falſhood of the ſuggeſtion of him that firſt levied it, for he cannot adminiſter to him an oath; and if he ſhould forbear his purſuit of the hue and cry till it be examined by a Juſtice of the peace, the felon might eſcape, and the purſuit would be loſt and fruitleſs. 2. Becauſe the conſtable is by the ſeveral acts of parliament compellable to purſue hue and cry; and he is puniſhable, and ſo are thoſe of the vill, if they do it not. 3. Becauſe he that firſt raiſeth a hue and cry, where no felony is committed, that is, he who giveth the falſe information, is ſeverely puniſhable by fine and impriſonment, if the information be falſe.

And therefore if he raiſe hue and cry upon a perſon that is innocent, yet they that purſue the hue and cry may juſtify the impriſonment of that innocent perſon; and the raiſer is puniſhable: and by the ſame reaſon, if he give notice of a felony committed, where there was in truth none.

And here the juſtification of the impriſonment is mixed, partly upon the hue and cry, and partly upon their own ſuſpicion; and therefore, 1. In reſpect that it is upon hue and cry there needs no averment, that the felony was done, if the arreſt be by that conſtable that firſt received the information, and ſo raiſed the hue and cry; or if the arreſt were made by that conſtable, or thoſe vills to whom the hue and cry came at the ſecond hand, it muſt be averred, that ſuch a hue and cry came to them, purporting ſuch a felony to be done. 2. But alſo inaſmuch as the hue and cry neither names nor deſcribes the perſon of the felon,

felon, but only the felony committed, and therefore the arreſt of this or that particular perſon is left to the ſuſpicion and diſcretion of the conſtable, or of the people of the ſecond or third vill, he that arreſts any perſon upon ſuch general hue and cry, muſt aver that he ſuſpected, and ſhew a reaſonable cauſe of ſuſpicion.

But now by the ſtatute of 7 *J.* *c.* 5. the conſtable, or any that come to his aſſiſtance, even in this caſe of hue and cry, may plead the general iſſue, and give the whole matter of the juſtification in evidence; for the purſuit of hue and cry, though performed by others as well as the conſtable, is principally the act of the conſtable of the vill, and the others are but as his deputies or aſſiſtants, within the precincts of their conſtablewick. 2 *H. H.* 101, 2, 3, 4.

18. It ſeems that they who are taken upon freſh hue and cry, are not bailable, as being to be accounted amongſt thoſe perſons, who are under a violent preſumption of guilt. 2 *Haw.* 98. Perſons taken on hue and cry, how far bailable.

19. By the 13 *Ed.* 1. *ſt.* 2. *c.* 6. Conſtables of hundreds ſhall be choſen, who ſhall preſent before juſtices aſſigned, defaults of the ſuits of towns, and all ſuch as lodge ſtrangers in uplandiſh towns, for whom they will not anſwer. High conſtables to preſent thoſe who purſue not hue and cry.

20. And they which levy not hue and cry, or purſue not upon hue and cry, may be indicted, fined, and impriſoned. 3 *Inſt.* 117. Puniſhment of thoſe who follow not hue and cry.

21. And it is an article of the leet, to inquire of hues and cries levied and not purſued. 18 *Ed.* 2. Power of the leet to inquire thereof.

A. Warrant to levy hue and cry on a robbery having been committed.

Weſtmorland. { To all conſtables and other officers, as well in the ſaid county of *Weſtmorland*, as elſewhere, to whom the execution hereof doth or ſhall belong.

WHEREAS A. I. *of*———*in the county of*——— *yeoman, hath this day made information upon oath, before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county of* W. *that on this preſent*———*day of*———*in the*——— *year of the reign of*———*betwixt the hours of three and four in the afternoon of the ſame day, at a*

place called ——— *in the ſaid county of* W. *in the king's highway there, two malefactors and felons to him the ſaid* A. I. *unknown, in and upon him the ſaid* A. I. *then and there being in the peace of God and of our lord the king, felonioufly did make an aſſault, and him the ſaid* A. I. *then and there felonioufly did put in great fear and danger of his life, and the ſum of* ——— *of lawful money of* Great Britain, *of the goods and chattels of him the ſaid* A. I. *from the perſon, and againſt the will of him the ſaid* A. I. *then and there violently and felonioufly did ſteal, take and carry away; and that one of the ſaid malefactors and felons, to him the ſaid* A. I. *unknown, is a tall, ſtrong man, and ſeemeth to be about the age of* ——— *years, is pitted in the face with the ſmall pox, and hath the ſcar of a wound under his left eye, and had then on a dark brown riding coat,* &c. *and did ride upon a bay gelding with a ſtar on his forehead; and the other,* &c. *And that after the ſaid felony and robbery committed, they the ſaid malefactors and felons to him the ſaid* A. I. *unknown, did fly, and withdraw themſelves to places unknown, and are not yet apprehended: Theſe are therefore to command you forthwith to raiſe the power of the towns within your ſeveral precincts, and to make diligent ſearch therein, for the perſons above deſcribed, and to make freſh purſuit and hue and cry after them from town to town, and from county to county, as well by horſemen, as by footmen; and to give due notice hereof in writing, deſcribing in ſuch notice the perſons and the offence aforeſaid, unto every next conſtable on every ſide, until they ſhall come to the ſea ſhore, or until the ſaid malefactors and felons ſhall be apprehended; and all perſons whom you or any of you ſhall, as well upon ſuch ſearch and purſuit, as otherwiſe, apprehend or cauſe to be apprehended, as juſtly ſuſpected for having committed the ſaid robbery and felony, that you do carry forthwith before ſome one of his ſaid majeſty's juſtices of the peace in and for the county where he or they ſhall be ſo apprehended, to be by ſuch juſtice examined, and dealt withal according to law. And hereof fail you not reſpectively, upon the peril that ſhall enſue thereon. Given under my hand and ſeal, at* ——— *in the ſaid county of* W. *the* ——— *day of* ——— *aforeſaid, in the year aforeſaid.*

Hundred.

IN ancient times, before the conqueſt, it was ordained for the more ſure keeping of the peace, that all free born men ſhould caſt themſelves into ſeveral companies, by ten in each company; and that every of thoſe ten men ſhould be ſurety and pledge for the forthcoming of his fellows. For which cauſe, theſe companies in ſome places were called tythings, as containing the number of ten men with their families. And even as ten times ten do make an hundred, ſo becauſe it was then alſo appointed, that ten of theſe companies ſhould at certain times meet together for their matters of greater weight, therefore that general aſſembly was, and yet is called an hundred. *Lamb. Conſt.* Hundred whence ſo called.

2. If any homicide be committed, or dangerous wound given, in the day time, and the offender eſcape, the town ſhall be amerced; and if out of a town, the hundred ſhall be amerced. 2 *Haw.* 74. Hundred to be amerced for an eſcape.

3. The hundred ſhall make good the damages, in the caſes of robbery; cutting banks; cutting hop binds; burning houſes, barns, outhouſes, hovels, cocks, mows, or ſtacks of corn, ſtraw, hay, or wood; mines or pits of coal; deſtroying granaries, or corn intended for exportation; deſtroying turnpikes; or works of navigable rivers; and the like: as may be ſeen under their proper titles. Hundred anſwerable in divers other caſes.

4. Writs of Execution which ſhall be ſued out againſt the inhabitants of any hundred, on any judgment obtained by virtue of any act of parliament, ſhall by the ſheriff on receipt thereof be produced to two juſtices, (1 Q.) in or near the hundred; who ſhall cauſe a taxation to be made and levied by the conſtables in 30 days, for paying the plaintiff's coſts and damages, and alſo all ſuch neceſſary expences as any inhabitants ſhall have been at in defending ſuch action; the ſame being firſt proved on oath before the ſaid juſtices; and the attorney's bill taxed. And the ſaid ſums ſhall be paid to the ſheriff by the conſtables in ten days after the time is expired for collecting; and by the ſheriff, to the perſons intitled to receive the ſame, without any deduction Damages how to be levied.

deduction or fee; all in the ſame manner, as is directed by the ſtatute of the 8 *G.* 2. *c.* 16 in caſes of robbery. 22 *G.* 2. *c.* 46. *ſ.* 34.

Hunting. See **Game.**
Huſband. See **Wife.**

Ideots. See **Lunaticks.**
Impriſonment. See **Arreſt, Commitment.**
Inceſt. See **Lewdneſs.**
Incloſures pulling down. See **Wood.**

Indictment.

I. Indictment, what.
II. What offences are indictable.
III. Within what time an indictment ſhall be brought.
IV. How far ſeveral offenders or ſeveral offences may be joined in one indictment.
V. Whether the grand jury may examine witneſſes againſt the king.
VI. How many witneſſes are requiſite to an indictment.
VII. Whether a grand jury may find an indictment ſpecially.
VIII. Indictment to be in Engliſh.
IX. Form of an indictment.
X. Charges of an indictment.

I. Indict-

I. Indictment, what.

INDICTMENT cometh of the *French* word *enditer*, and ſignifieth in law, an accuſation found by an inqueſt of twelve or more upon their oath. And as the *appeal* is ever the ſuit of the party, ſo the indictment is always the ſuit of the king, and as it were his declaration; and the party who proſecutes it, is a good witneſs to prove it. And when ſuch accuſation is found by a grand jury, without any bill brought before them, and afterwards reduced to a formed indictment, it is called a *preſentment*; and when it is found by jurors returned to inquire of that particular offence only which is indicted, it is properly called an *inquiſition*. 1 Inſt. 126. 2 Haw. 209.

II. What offences are indictable.

There can be no doubt, but that all capital crimes whatſoever, and alſo all kinds of inferior crimes of a publick nature, as miſpriſions, contempts, diſturbances of the peace, oppreſſions, and all other miſdemeanors whatſoever of a publick evil example againſt the *common law*, may be indicted; but no injuries of a private nature, unleſs they ſome way concern the king. 2 *Haw.* 210.

Alſo it ſeems to be a good general ground, that whereever a *ſtatute* prohibits a matter of a publick grievance to the liberties and ſecurity of a ſubject; or commands a matter of publick convenience, as the repairing of the common ſtreets of a town; an offender againſt ſuch ſtatute is puniſhable, not only at the ſuit of the party grieved, but alſo by way of indictment for his contempt of the ſtatute, unleſs ſuch method of proceeding do manifeſtly appear to be excluded by it. Yet if the party offending hath been fined to the king, in the action brought by the party (as it is ſaid that he may in every action for doing a thing prohibited by ſtatute); it ſeems queſtionable, whether he may afterwards be indicted, becauſe that would make him liable to a ſecond fine for the ſame offence. 2 *Haw.* 210.

But if a ſtatute extend only to *private* perſons, or if it extend to all perſons in general, but chiefly concern diſputes of a private nature, as thoſe relating to diſtreſſes made

made by lords on their tenants; it is ſaid that offences againſt ſuch ſtatute will hardly bear an indictment. 2 *Haw.* 211.

Alſo where a ſtatute makes a new offence, and appoints a particular method of proceeding, without mentioning an indictment, it ſeemeth to be ſettled at this day, that it will not maintain an indictment. 2 *Haw.* 211. *Str.* 679.

But lord *Hale* diſtinguiſhes upon this, and ſays, that if a ſtatute prohibit any act to be done, and by a ſubſtantive clauſe gives a recovery by action of debt, bill, plaint, or information, but mentions not an indictment; the party may be indicted upon the *prohibitory clauſe*, and thereupon fined, but not to recover the penalty; but then it ſeems the fine ought not to exceed the penalty; but if the act be not prohibitory, but only that if any perſon ſhall do ſuch a thing, he ſhall forfeit ſo much, to be recovered by action of debt, bill, plaint, or information; then he cannot be indicted for it, but the proceeding muſt be by action, bill, plaint or information. 2 *H. H.* 171.

Alſo, where a ſtatute adds a further penalty, to an offence, prohibited by the common law; there can be no doubt, but that the offender may be ſtill indicted, if the proſecutor thinks fit, at the common law. And if the indictment for ſuch offence conclude *againſt the form of the ſtatute*, and cannot be made good as an indictment upon the ſtatute, it ſeems to be now ſettled, that it may be maintained as an indictment at common law. 2 *Haw.* 211.

A fact amounting to a felony, is not indictable as a treſpaſs. L. *Raym.* 712.

III. Within what time an indictment ſhall be brought.

By the 31 *El. c.* 5. All indictments upon any ſtatute penal, whereby the forfeiture is limited to the king, ſhall be ſued within two years after the offence committed: if the forfeiture is limited to the king and proſecutor, the ſuit ſhall be in one year; and in default thereof, the ſame ſhall be ſued for the king, within two years after that year ended. But where a ſtatute limits a ſhorter time, the ſuit ſhall be brought within ſuch time limited.

But for indictments of felonies and other miſdemeanors where there is no forfeiture to the king, or to the king and proſecutor, no time is limited by any ſtatute; but the ſeveral acts of general pardon have the effect of a like limi-

limitation. The laſt act of which kind was that of the 20 *G.* 2. *c.* 52. for certain offences committed before *June* 15. 1747.

IV. How far ſeveral offenders or ſeveral offences may be joined in one indictment.

1. If there be *one offender*, and *ſeveral offences* committed by him, as burglary and larceny, they may be contained in one indictment. 2 *H. H.* 173.

But in the caſe of *K.* and *Clendon*, *T.* 4 *G.* 2. There was an indictment ſetting forth, that the defendant made an aſſault upon *Sarah Beatniff* and *Elizabeth Cooper*, and did them beat, wound, and evil intreat. After verdict for the king, it was moved in arreſt of judgment, that theſe were two diſtinct offences, and therefore could not be laid in the ſame indictment; and of that opinion was the court, and the judgment was arreſted. *Stra.* 870.

2. If there be *ſeveral offenders* that commit the ſame *offence*, though in law they are ſeveral offences in relation to the ſeveral offenders, yet they may be joined in one indictment; as if ſeveral commit a robbery, or burglary, or murder. 2 *H. H.* 173.

3. And ſo it is, though the offences are of *ſeveral degrees*, but dependant one upon another, as the principal in the firſt degree, and the principal in the ſecond degree, to wit, preſent, aiding and abetting the principal, and acceſſary before or after. 2 *H. H.* 173.

4. Alſo ſeveral perſons may be indicted in the ſame indictment for *ſeveral offences of the ſame nature*, as for keeping diſorderly houſes; but the indictment ought to ſet forth that they ſeverally did ſo. 2 *H. H.* 173.

And this is only to be underſtood, where the offences may be joint, as in extortion, maintenance, receiving ſtolen goods, and the like; and not where the offence is a ſeparate act in each, as in the caſe of *K.* againſt *Philips* and others, *M.* 5 *G.* 2. Six were indicted in one indictment for *perjury*, and four of them pleading, were convicted. It was moved in arreſt of judgment, that the crime of perjury is in its nature ſeveral, and two cannot be indicted together. And by the court, There may be great inconveniences if this is allowed; one may be deſirous to have a certiorari, and the other not; the jury on the trial of all, may apply evidence to all, that is but evidence againſt one: And they cited a caſe, *T.* 6 *An.* *Q.*

againſt

againſt *Hodgſon* and others, where two were indicted for being ſcolds, and compared to barratry, and it was held not to lie. And in the principal caſe judgment was arreſted. *Str.* 921.

In like manner, *E.* 11 *G. K.* againſt *Weſton* and others. There was an indictment againſt ſix jointly and ſeverally for exerciſing a trade; and quaſhed, becauſe there ought to be diſtinct indictments. *Str.* 623.

5. Larcenies committed of ſeveral things, though *at ſeveral times* and *from ſeveral perſons*, may be joined in one indictment. 2 *H. H.* 173.

V. Whether the grand jury may examine witneſſes againſt the king.

Lord *Hale* ſays, that the grand jury at the aſſizes or ſeſſions ought only to hear the evidence for the king, and in caſe there be probable evidence, they ought to find the bill, becauſe it is but an accuſation, and the party is to be put on his trial afterwards. 2 *H. H.* 157.

Which doctrine is alſo laid down by chief juſtice *Pemberton*, in the caſe of the earl of *Shaftſbury*, St. Tr. V. 3. p. 415.

But the learned editor of *Hale's Hiſtory* obſerves upon this, that Sir *John Hawles* in his remarks on the ſaid caſe, *St. Tr. V.* 4. *p.* 183. unanſwerably ſhews, that a grand jury ought to have the ſame perſuaſion of the truth of the indictment as a petty jury, or a coroner's inqueſt; for they are ſworn to preſent the truth, and nothing but the truth.

And lord *Coke* ſays, that ſeeing indictments are the foundation of all, and are commonly found in the abſence of the party accuſed, it is neceſſary there ſhould be ſubſtantial proof. 3 *Inſt.* 25.

VI. How many witneſſes are requiſite to an indictment.

An indictment may be found upon the oath of one witneſs only, unleſs it be for high treaſon, which requires two witneſſes. 2 *Haw.* 256. And unleſs, in any inſtance it be otherwiſe ſpecially directed by act of parliament.

VII. Whether

VII. Whether the grand jury may find an indictment ſpecially.

It ſeems to be generally agreed, that the grand jury may not find part of an indictment to be true, and part falſe; but muſt either find a true bill or *ignoramus* for the whole; and that if they take upon them to find it ſpecially, or conditionally, or to be true for part only, and not for the reſt, the whole is void, and the party cannot be tried upon it, but ought to be indicted anew. 2 *Haw.* 210.

VIII. Indictment to be in Engliſh.

All indictments, informations, inquiſitions and preſentments, ſhall be in *Engliſh*, and be written in a common legible hand, and not court hand; on pain of 50 l. to him that ſhall ſue in three months. 4 *G.* 2. *c.* 26. 6 *G.* 2. *c.* 14.

IX. Form of an indictment.

In order to underſtand this matter rightly, it is judged requiſite firſt to inſert the intire form of an indictment, and then to take it in pieces, and explain the ſeveral parts of it in their order.

The inſtance which is choſen is on the ſtatute of ſtabbing. 1 *J.* *c.* 8.

The *caption* of the indictment is no part of the indictment itſelf, but is the ſtyle or preamble, or return that is made from an inferior court to a ſuperior, from whence a certiorari iſſues to remove; or when the whole record is made up in form; for whereas the record of the indictment, as it ſtands upon the file in the court where it is taken, is only thus, *The jurors for our lord the king upon their oath preſent*; when this comes to be returned upon a certiorari, it is more full and explicit, as follows: 2 *H. H.* 166.

Weſtmorland. AT *the general quarter ſeſſions of the peace holden at* Appleby *in and for the county aforeſaid, the ſeventh day of* April *in the firſt year of the reign of our ſovereign lord* George *the third of* Great Britain, France, *and* Ireland, *king, defender of the faith, and*

and ſo forth, Before J. P. *and* K. P. *eſquires, and others their aſſociates, juſtices of our ſaid lord the king, aſſigned to keep the peace of our ſaid lord the king in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, by the oath of——————good and lawful men of the county aforeſaid, ſworn and charged to inquire for our ſaid lord the king, and for the body of the county aforeſaid, it is preſented*;

That John Armſtrong *late of* Appleby *in the county aforeſaid, yeoman, not having God before his eyes, but being moved and ſeduced by the inſtigation of the devil, on the thirtieth day of* March *in the firſt year of the reign of our ſaid ſovereign lord* George *the third of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth, at the hour of nine in the afternoon of the ſame day, with force and arms, at* Appleby *aforeſaid in the county aforeſaid, in and upon one* George Harriſon *in the peace of God and of our ſaid lord the king then and there being (the aforeſaid* George Harriſon *not having any weapon than drawn, nor the aforeſaid* George Harriſon *having firſt ſtricken the ſaid* John Armſtrong*) feloniouſly did make an aſſault*; *and that the aforeſaid* John Armſtrong, *with a certain drawn ſword of the value of five ſhillings, which he the ſaid* John Armſtrong *in his right hand then and there had and held, the ſaid* George Harriſon *in and upon the right ſide of the belly near the ſhort ribs of him the ſaid* George Harriſon (*the aforeſaid* George Harriſon *as is aforeſaid then and there not having any weapon drawn, nor the aforeſaid* George Harriſon *then and there having firſt ſtricken the ſaid* John Armſtrong*) then and there feloniouſly did ſtab and thruſt, giving unto the ſaid* George Harriſon *then and there with the ſword aforeſaid, in form aforeſaid, in and upon the right ſide of the belly near the ſhort ribs of him the ſaid* George Harriſon *one mortal wound of the breadth of one inch, and of the depth of nine inches; of which ſaid mortal wound, he the ſaid* George Harriſon *then and there inſtantly died. And ſo the jurors aforeſaid upon their oath aforeſaid do ſay, that the ſaid* John Armſtrong *him the ſaid* George Harriſon *on the aforeſaid thirtieth day of* March *in the year aforeſaid, at* Appleby *aforeſaid in the county aforeſaid, in manner and form aforeſaid, feloniouſly did kill; againſt the peace of our ſaid lord the now king, his crown and dignity, and againſt the form of the ſtatute in ſuch caſe made and provided.*

Weſt-

Weſtmorland] The name of the county muſt be in the margin, or repeated in the body of the caption. 2 *H. H.* 166.

At the general quarter ſeſſions of the peace] The court where the indictment is made, muſt be expreſſed; otherwiſe the caption is erroneous. 1 *H. H.* 166. 2 *Haw.* 252.

Holden at Appleby *in and for the county aforeſaid*] It muſt appear where the ſeſſions was held; and that the place, where it was held, is within the extent of the commiſſion. 2 *H. H.* 166.

The ſeventh day of April *in the firſt year of the reign of our ſovereign lord* George *the third*] It hath been adjudged, that if the caption of the indictment deſcribe the ſeſſions holden in the time paſt, and not in the time preſent; or as holden on ſuch a day in ſuch a year of the king, without aſcertaining what king, it is inſufficient. But it ſeems to be agreed, that it is ſufficient to expreſs the year of the king, without adding that of our lord. 2 *Haw.* 255.

The ſeventh day] Figures to expreſs numbers are not allowable in an indictment; but numbers muſt be expreſſed in words. 2 *H. H.* 170. *Cr. Cir.* 109. *Andr.* 137. *H.* 11 *G.* 2. *K.* and *Haddock.* Or at leaſt in *Roman* numerals. *Str.* 261. *H.* 6 *G. K.* and *Philips.*

Before J. P. *and* K. P. *eſquires, and others their aſſociates*] It is not neceſſary to name all the juſtices, but only ſo many as are enabled to hold a ſeſſions, and the reſt may be ſupplied by the words *and others their aſſociates.* 2 H. H. 166.

And altho' no ſeſſions can be held without one of the juſtices being of the *quorum*, yet in the caption there need not be any mention which of them, or whether any of them, are of the *quorum*, for it is ſufficient if *de facto* the ſeſſions be held before him or them that are of the *quorum*, altho' not ſo mentioned, and ſo is the uſual courſe. 2 *H. H.* 167.

And alſo to hear and determine, &c.] Theſe words are neceſſary, becauſe without this clauſe (by the commiſſion)

they cannot proceed by indictment. 2 *H. H.* 166. *Sav.* 442.

By the oath] If the caption concludes that *it is presented* without saying *on their oath*, it shall be quashed; for their presentment must be upon oath, and so returned. 2 *H. H.* 168.

By the oath of———] It must name the jurors that presented the offence; and therefore by the oath of *A. B. C. D.* and others, is not good; for it may be the presentment was by a less number than 12, or that some one of them was incapacitated who might influence all the rest, as for instance a person outlawed; in which case the indictment may be quashed by plea. 2 *H. H.* 167.

Good and lawful men of the county aforesaid] These words also, lord *Hale* saith, are necessary. 2 *H. H.* 167. But Mr. *Hawkins* says, they have been often over-ruled; because all men shall be intended to be honest and lawful, till the contrary appear. 2 *Haw.* 215.

Sworn and charged to inquire for our said lord the king, and for the body of the county aforesaid] These words also seem requisite to be inserted. 2 *H. H.* 167. But yet do not seem to be absolutely necessary. L. *Raym.* 710.

It is presented; that John Armstrong, *late of* Appleby *in the county aforesaid, yeoman*] The name of the party indicted regularly ought to be inserted, and inserted truly in every indictment. 2 *H. H.* 175.

But the inhabitants of a parish, may be indicted for not repairing the highway, although no person is particularly named. *Wood. b.* 4. *c.* 5.

It is said that no person indicted can take any advantage of a mistaken furname in the indictment, notwithstanding such surname hath no manner of affinity with its true one, and he was never known by it. 2 *Haw.* 230, 1, 2, 3. 2 *H. H.* 176.

But the mistake of the christian name is pleadable, and the party shall be dismissed from that indictment. 2 *H. H.* 176.

But the safest way is to allow his plea of *misnomer*, both as to his surname and as to his christian name, for he that pleads *misnomer* of either, must in the same plea set forth what his true name is, and then he concludes him-

ſelf, and if the grand jury be not diſcharged, the indictment may preſently be amended by the grand jury, and returned according to the name he gives himſelf. 2 *H. H.* 176.

Alſo an indictment naming the defendant by two chriſtian names is not good. L. *Raym.* 562.

If the *county* is in the margin, and the indictment ſets forth the fact to be done at ſuch a place *in the county aforeſaid*, it is good, for it refers to the county in the margin; but if there be two counties named, one in the margin, and another in the addition of any party, or in the recital of an act of parliament the fact laid at ſuch a place in the county aforeſaid, vitiates the indictment, becauſe two counties are named before, and therefore it is uncertain to which it refers. *Crown Cir.* 116, 115.

By the 1 *H.* 5. *c.* 5. In all indictments on which proceſs of outlawry lieth, to the names of the defendants *additions* ſhall be made of their eſtate, or degree, or miſtery, and of the towns, or hamlets, or places, and counties where they were or be converſant.

But altho' the defendant be indicted by a wrong name or addition, or with no addition, yet if he appear, and plead Not guilty, without taking advantage of that defect, he ſhall never alledge the *miſnomer* or want of addition to ſtop his trial or judgment; for by ſuch his appearance, and pleading to iſſue, the indictment is affirmed, and the *miſnomer* or want of addition ſalved. 2 *H. H.* 176.

And if ſeveral perſons be indicted for one offence, *miſnomer* or want of addition of one, quaſhed the indictment only againſt him, and the reſt ſhall be put to anſwer; for they are in law as ſeveral indictments. 2 *H. H.* 177.

And it is the common practice, where an indictment is inſufficient, while the grand jury is before the court, to amend it by their conſent, in a matter of form as the name or addition of the party, or the like. 2 *Haw.* 245.

Not having God before his eyes, but being moved and ſeduced by the inſtigation of the devil] I do not find it aſſerted by any authority, that theſe words are neceſſary in an indictment.

On the thirtieth day of March *in the firſt year of the reign*, &c.] No indictment can be good, without preciſely ſhewing a certain *day* of the material facts alledged in it. 2 *Haw.* 235.

And if the offence be done in the night, before midnight, the indictment ſhall ſuppoſe it to be done in the day before; and if it happen after midnight, then it muſt ſay, it was done that day after. *Lamb.* 492.

And altho' the day be inſerted, yet if the *year* is not likewiſe inſerted, the indictment is inſufficient. 2 *H. H.* 177.

But where an indictment charges a man with a bare omiſſion, as the not ſcouring ſuch a ditch, it is ſaid, that it needs not ſhew any time. 2 *Haw.* 236.

It is moſt regular to ſet forth the year, by ſhewing the year of the king; yet this may be diſpenſed with for ſpecial reaſons, if the very year be otherwiſe ſufficiently expreſſed. 2 *Haw.* 236.

And if it ſay, on ſuch a day laſt paſt, without ſhewing in what year, that is good enough; for the certainty may be found out by the ſtyle of the ſeſſions. *Lamb.* 491.

But tho' the day or year be miſtaken in the indictment, yet if the offence were committed in the ſame county, tho' at another time, the offender ought to be found guilty: but then it may be requiſite, if any eſcheat or forfeiture of land be conceived in the caſe, for the petit jury to find the true time of the offence committed; and therefore it is beſt in the indictment to ſet down the time as truly as can be, tho' it be not of abſolute neceſſity to the defendant's conviction. 2 *H. H.* 179.

And this the rather, becauſe the jury are to find the nd ictment upon their oaths. *Dalt. c.* 184.

Upon which ground, namely, becauſe the jury are ſworn to preſent the truth, it is beſt to lay all the facts in the indictment as near to the truth as may be; and not to ſay, in an indictment for a ſmall aſſault, (for inſtance) wherein the perſon aſſaulted received little or no bodily hurt, that ſuch a one *with ſwords, ſtaves, and piſtols, beat, bruiſed and wounded him, ſo that his life was greatly deſpaired of*; nor to ſay in an indictment for an highway being obſtructed, that the king's ſubjects cannot go thereon, *without manifeſt danger of their lives*; and the like. Which kind of words, as they are not at all neceſſary,

ſo

ſo they may ſtagger an honeſt man upon his oath, to find the fact as ſo laid.

At the hour of nine in the afternoon of the ſame day] It is not neceſſary to mention the *hour*, in an indictment. 2 *Haw.* 235.

With force and arms] By the 37 *H.* 8. *c.* 8. it is enacted, that whereas it had been commonly uſed in indictments, to put in the ſame the words *vi & armis*, and in divers of the ſame indictments to declare the manner of the force and arms, viz. *baculis*, *cultellis*, *arcubus*, *& ſagittis*, or ſuch like, where in truth the parties had no manner of ſuch weapons at the time of the offence committed; therefore for the future, theſe words, or ſuch like, ſhall not of neceſſity be put in any inquiſition or indictment.

But yet where ſuch words are proper and pertinent, it is ſafe and adviſeable to inſert them, if it be to no other purpoſe than to aggravate the offence. 2 *Haw.* 242.

At Appleby *aforeſaid*, *in the county aforeſaid*] No indictment can be good, without expreſly ſhewing ſome *place* wherein the offence was committed, which muſt appear to have been within the juriſdiction of the court. 2 *Haw.* 236.

But a miſtake of the place will not be material upon the evidence, on not guilty pleaded, if the fact be proved at ſome other place in the ſame county. 2 *Haw.* 237.

And it is not ſufficient that the county be expreſſed in the margent, but the vill where the offence was committed muſt be alledged to be in the county named in the margent, or, *in the county aforeſaid*, which ſeems to be ſufficient where but one county is named before, but to be uncertain where a county is named in the body of the indictment different from that in the margent. 2 *Haw.* 220. 2 *H. H.* 180.

In and upon one George Harriſon] Wherever the perſon injured is known to the jurors, his name ought to be put in the indictment. 2 *Haw.* 232.

But if they know not his name, an indictment for the murder of a perſon unknown, or for ſtealing the goods of a perſon unknown, is good. 2 *H. H.* 181.

Alſo there is no need of an addition of the perſon upon whom the offence is committed, unleſs there be a plura-

lity of perſons of the ſame name; neither then is it eſſential to the indictment, tho' ſometimes it may be convenient for diſtinction ſake to add it. 2 *H. H.* 182.

In the peace of God, and of our ſaid lord the king, then and there being] It is uſual to alledge this, but not neceſſary, and poſſibly not true, for he might be breaking the peace at the time. 2 *H. H.* 186.

The aforeſaid George Harriſon *not having any weapon then drawn, nor the aforeſaid* George Harriſon *having firſt ſtricken the ſaid* John Armſtrong] An indictment grounded upon an offence made by act of parliament, muſt by expreſs words bring the offence within the ſubſtantial deſcription made in the act of parliament; and thoſe circumſtances mentioned in the ſtatute to make up the offence, ſhall not be ſupplied by the general concluſion *againſt the form of the ſtatute.* 2 H. H. 170.

And ſo it is, if an act of parliament ouſt clergy in certain caſes, as murder *of malice forethought*, robbery *in or near the highway*, though the offences themſelves were at common law, yet becauſe at common law within clergy, they ſhall not be ouſted of clergy, though convicted, unleſs theſe circumſtances, as *of malice forethought*, or *near the highway*, be expreſſed in the indictment. 2 *H. H.* 170.

But there is no neceſſity in an indictment on a publick ſtatute, to recite ſuch ſtatute; for the judges are bound *ex officio* to take notice of all publick ſtatutes. 2 *Haw.* 245.

Yet if the proſecutor take upon him to recite it, and materially vary from a ſubſtantial part of the purview of the ſtatute, and conclude *againſt the form of the ſtatute aforeſaid*, he vitiates the indictment. 2 *Haw.* 246.

Alſo it ſeems to be generally agreed, that a miſrecital of the place or day at which the parliament was holden, vitiates an indictment. 2 *Haw.* 246.

And it hath been adjudged, that a miſrecital of the title of a ſtatute is fatal. 2 *Haw.* 247.

But there is no need to alledge in an indictment, that the defendant is not within the benefit of the proviſoes of the ſtatute; although the ſame may be neceſſary in a *conviction:* for ſince no plea can be admitted to a conviction, and the defendant can have no remedy againſt it, but from an exception to ſome defect appearing in the face of it, and all the proceedings are in a ſummary manner, it is but

but reaſonable that ſuch a conviction ſhould have the higheſt certainty. 2 *Haw.* 250. 2 *H. H.* 170, 1.

Felonioufly did make an aſſault] There are ſeveral words of art which the law hath appropriated for the deſcription of the offence, which no circumlocution will ſupply; as *felonioufly*, in the indictment of any felony; *burglarioufly*, in an indictment of burglary; and the like. 2 *H. H.* 184.

And if a man be indicted that he *ſtole*, and it is not ſaid *felonioufly*, this indictment imports but a treſpaſs. 2 *H. H.* 172.

With a certain drawn ſword] Yet if the party were killed with another weapon, it maintains the indictment; but if it were with another kind of death, as poiſoning, or ſtrangling, it doth not maintain the indictment upon evidence. 2 *H. H.* 185.

Of the value of five ſhillings] Regularly it ought to ſet forth the price of the ſword or weapon, or elſe ſay of no value; for the weapon, is a deodand forfeited to the king, and the townſhip ſhall be charged for the value, if delivered to them; but this ſeems not to be eſſential to the indictment. 2 *H. H.* 185.

Which he the ſaid John Armſtrong *in his right hand then and there had and held*] It muſt ſhew in what hand he held his ſword. 2 *H. H.* 185.

In and upon the right ſide of the belly near the ſhort ribs of him the ſaid George Harriſon] There muſt be a *certainty* of the offence committed, and nothing material ſhall be taken by intendment or implication; but the ſpecial manner of the whole fact ought to be ſet forth with certainty. 2 *Haw.* 225, 227.

And therefore in the caſe of murder, it ought to ſhew in what part of the body the perſon was wounded: and therefore if it be on his arm, or hand or ſide, without ſaying whether right or left, it is not good. 2 *H. H.* 185.

If theft be alledged in any thing, the indictment muſt ſet forth the value of the thing ſtolen; that it may appear, whether it be grand or petit larceny. 2 *H. H.* 183.

In like manner, an indictment that the defendant took and carried away ſuch a perſon's goods and chattels, with-

out ſhewing what in certain, as one horſe, one cow, is not good. 2 *H. H.* 182.

An indictment that the defendant is a common highwayman, a common defamer, a common diſturber of the peace, and the like, is not good; becauſe it is too general, and contains not the particular matter wherein the offence was committed. 2 *H. H.* 182.

In like manner an indictment for divers ſcandalous, threatning and contemptuous words, ſpoken of a juſtice of the peace, is not good, but ought to ſet forth the words in ſpecial. *Str.* 699.

An indictment for diſobeying an order of juſtices, muſt find poſitively, that ſuch an order was made, and not by way of recital, *that whereas* ——— L. Raym. 1363.

But in an indictment on a conviction, it is not neceſſary to ſet forth the conviction at large, but only ſhortly that ſuch a one was before ſuch and ſuch juſtices convicted, according to the form of the ſtatute, and thereupon a warrant was iſſued, *&c.* L. Raym. 1196.

Then and there felonioufly did ſtab and thruſt] In an indictment it is beſt, and often neceſſary, to repeat the time and place, to the ſeveral parts of the fact. 2 *H. H.* 178.

Thus in an indictment of murder or manſlaughter, as well the day and place of the ſtroke, or other act done, as of the death, muſt be expreſſed; the former, becauſe the eſcheat or forfeiture of lands relates thereto; the latter, becauſe it muſt appear that the death was within the year and day after the ſtroke. 2 *H. H.* 179.

One mortal wound of the breadth of one inch, and of the depth of nine inches] Regularly the length and depth of the wound is to be ſhewed; but this is not neceſſary in all caſes, as namely, where a limb is cut off; ſo it may be alſo a dry blow. 2 *H. H.* 186.

But though the manner and place of the hurt and its nature be requiſite, as to the formality of the indictment, and it is fit to be done as near the truth as may be; yet if upon evidence it appear to be another kind of wound in another place, if the party died of it, it is ſufficient to maintain the indictment. 2 *H. H.* 186.

Againſt

Againſt the peace of our ſaid lord the king] An indictment without concluding againſt the peace, is inſufficient, tho' it be but for uſing a trade not having been an apprentice; for every offence againſt a ſtatute is againſt the peace, and ought ſo to be laid. 2 *H. H.* 188.

Alſo an indictment that concludes againſt the peace, and ſaith not *of our lord the king*, is inſufficient. 2 *H. H.* 188.

His crown and dignity] An indictment need not conclude *againſt his crown and dignity*, though it be uſual in many indictments. 2 *H. H.* 188.

And againſt the form of the ſtatute in ſuch caſe made and provided] Regularly, if a ſtatute only make an offence, or alter an offence from one crime to another, as making a bare miſdemeanor to become a felony, the indictment for ſuch new made offence, or new made felony, muſt conclude againſt the form of the ſtatute, or otherwiſe it is inſufficient. 2 *H. H.* 192.

But if a man be indicted for an offence, which was at common law, and concludes againſt the form of the ſtatute, but in truth it is not brought by the indictment within the ſtatute, it ſhall be quaſhed and the party ſhall not be put to anſwer it as an offence at common law. 2 *H. H.* 171.

And if an offence were felony at common law, but a ſpecial act of parliament ouſts the offender of ſome benefit that the common law allowed him, when certain circumſtances are in the fact; though the body of ſuch indictment muſt expreſs thoſe circumſtances, according as they are preſcribed in the ſtatute, yet the indictment need not conclude againſt the form of the ſtatute: Thus on the ſtatute of the 8 *El. c.* 4. in caſe of pick-pockets, the body of the indictment muſt bring them within the expreſs purview of the ſtatute, or otherwiſe they ſhall have the benefit of clergy; but it need not conclude againſt the form of the ſtatute, neither is it uſual in ſuch caſes, for it was felony before, and the ſtatue doth not give a new puniſhment, nor make it to be a crime of another nature, but only takes away clergy. But yet, if it ſhould conclude in ſuch caſe againſt the form of the ſtatute, it would not vitiate the indictment, but would be only ſurpluſage. 2 *H. H.* 190.

If an act of parliament, making an offence, be but temporary, and made perpetual by another ſtatute, the indict-

indictment concluding againſt the form of the *ſtatute*, is good. 2 *H. H.* 173.

If the former ſtatute be diſcontinued, and revived by another ſtatute, the beſt way is to conclude againſt the form of the *ſtatutes*; though there is good opinion, that it is good enough to conclude againſt the form of the firſt ſtatute. 2 *H. H.* 173.

If one ſtatute be relative to another, as where the former makes the offence, the latter adds a penalty; the indictment ought to conclude againſt the form of the ſtatutes. 2 *H. H.* 173.

X. Charges of an indictment.

By the 10 & 11 *W. c.* 23. No clerk of aſſize, clerk of the peace, or other perſon, ſhall take any fee of any perſon bound over to give evidence againſt a traytor or felon, for the diſcharge of his recognizance; nor ſhall take more than 2 s. for drawing any bill of indictment againſt any ſuch felon: on pain of 5 l. to the party grieved, with full coſts. And if he draw a bill defective, he ſhall draw a new one *gratis*, on the like pain.

For the drawing of indictments for other miſdemeanors, not being treaſon or felony, no fee is limited by any ſtatute: and therefore the ſame dependeth upon the cuſtom and ancient uſage.

Condition of a recognizance to prefer a bill of indictment.

THE *condition of this recognizance is ſuch, That if the above bound* A. I. *ſhall perſonally appear at the next general quarter ſeſſions of the peace to be holden at* ——— *in and for the ſaid county, and then and there prefer a bill of indictment againſt* A. O. *late of* ——— *yeoman, for the felonious taking and carrying away of* ——— *the property of* ——— *and ſhall then and there give evidence concerning the ſame, to the jurors who ſhall inquire thereof on the part of our ſaid lord the king: And in caſe the ſame be found a true bill, Then if the ſaid* A. I. *ſhall perſonally appear before the jurors who ſhall paſs upon the trial of the ſaid* A. O. *and give evidence upon the ſaid indictment, and not depart without leave of the court, Then this recognizance to be void.*

Condi-

Condition of a recognizance to anſwer to an indictment.

THE *condition of this recognizance is ſuch, That if the above-bound* A. O. *ſhall perſonally appear at the next general quarter ſeſſions of the peace to be holden at* ——— *in and for the ſaid county, then and there to anſwer to an indictment to be preferred againſt him by* A. I. *of* ——— *yeoman, for aſſaulting and beating him the ſaid* A. I. *and not depart without leave of the court, Then this recognizance to be void.*

Infants.

1. BY an infant, or minor, is meant any one who is under the age of 21 years. 1 *Inſt.* 2. Infant, who.

2. It is ſaid generally, that thoſe who are under a natural diſability of diſtinguiſhing between good and evil, as infants under the age of 14 years, which is called the age of diſcretion, are not puniſhable by any criminal proſecution whatſoever. But this muſt be underſtood with ſome allowance; for if it appear by the circumſtances, that an infant under the age of diſcretion, could diſtinguiſh between good and evil, as if one of the age of nine or ten years kill another and hide the body, or make excuſes, or hide himſelf, he may be convicted and condemned, and forfeit as much as if he were of full age: but in ſuch caſe the judges will in prudence reſpite the execution, in order to get a pardon; and it is ſaid, that if an infant apparently wanting diſcretion, be indicted and found guilty of felony, the juſtices themſelves may diſmiſs him without a pardon. And in general it muſt be left to the diſcretion of the judge, upon the circumſtances of the caſe, how far an infant, under that age, is *capax doli*, or hath knowledge to diſcern betwixt good and evil. *Hale's Pl.* 43. 1 *Haw.* 2. 1 *H. H.* 18. Committing a crime under 14.

A remarkable inſtance of this kind we have in the caſe of *William York*. At *Bury* ſummer aſſizes 1748, *William York*, a boy of ten years of age was convicted before lord

lord chief juſtice *Willes*, for the murder of a girl of about five years of age; and received ſentence of death. But the chief juſtice, out of regard to the tender years of the priſoner, reſpited execution, till he ſhould have an opportunity of taking the opinion of the reſt of the judges, whether it was proper to execute him or not, upon the ſpecial circumſtances of the caſe; which he reported to the judges as follows. The boy and girl were pariſh children, but under the care of a pariſhioner, at whoſe houſe they were lodged and maintained. On the day the murder happened, the man of the houſe and his wife went out to their work early in the morning, and left the children in bed together. When they returned from work the girl was miſſing; and the boy being aſked what was become of her, anſwered, that he had helped her up, and put on her cloaths, and that ſhe was gone he knew not whither. Upon this, ſtrict ſearch was made in the ditches and pools of water near the houſe, from an apprehenſion that the child might have fallen into the water. During this ſearch, the man under whoſe care the children were, obſerved that a heap of dung near the houſe had been newly turned up. And upon removing the upper part of the heap he found the body of the child, about a foot's depth under the ſurface, cut and mangled in a moſt barbarous and horrid manner. Upon this diſcovery, the boy, who was the only perſon capable of committing the fact, that was left at home with the child, was charged with the fact which he ſtiffly denied. When the coroner's jury met, the boy was again charged, but perſiſted ſtill to deny the fact. At length being cloſely interrogated, he fell to crying, and ſaid he would tell the whole truth. He then ſaid, that the child had been uſed to foul herſelf in bed; that ſhe did ſo that morning (which was not true, for the bed was ſearched and found to be clean); that thereupon he took her out of the bed and carried her to the dung heap; and with a large knife, which he found about the houſe, cut her in the manner the body appeared to be mangled, and buried her in the dung heap; placing the dung and ſtraw that was bloody under the body, and covering it up with what was clean; and having ſo done, he got water and waſhed himſelf as clean as he could. The boy was the next morning carried before a neighbouring juſtice, before whom he repeated his confeſſion, with all the circumſtances he had related to the coroner and his jury. The juſtice very prudently deferred proceeding to a commitment, till the

boy

boy ſhould have an opportunity of recollecting himſelf. Accordingly he warned him of the danger he was in, if he ſhould be thought guilty of the fact he ſtood charged with, and admoniſhed him not to wrong himſelf; and then ordered him into a room, where none of the crowd that attended ſhould have acceſs to him. When the boy had been ſome hours in this room, where victuals and drink were provided for him, he was brought a ſecond time before the juſtice, and then he repeated his former confeſſion: Upon which he was committed to gaol. On the trial evidence was given of the declarations before mentioned to have been made before the coroner and his jury, and before the juſtice; and of many declarations to the ſame purpoſe, which the boy made to other people after he came to gaol, and even down to the day of his trial. For he conſtantly told the ſame ſtory in ſubſtance, commonly adding that the devil put him upon committing the fact. Upon this evidence, with ſome other circumſtances tending to corroborate the confeſſion, he was convicted. Upon this report of the chief juſtice, the judges having taken time to conſider of it, unanimouſly agreed, 1. That the declarations ſtated in the report were evidence proper to be left to the jury. 2. That ſuppoſing the boy to have been guilty of this fact, there are ſo many circumſtances ſtated in the report which are undoubtedly tokens of what lord chief juſtice *Hale* ſomewhere calleth a *miſchievous diſcretion*, that he is certainly a proper object for capital puniſhment, and ought to ſuffer. For it would be of very dangerous conſequence to have it thought, that children may commit ſuch atrocious crimes with impunity. There are many crimes of the moſt heinous nature, ſuch as in the preſent caſe the murder of young children, poiſoning parents or maſters, burning houſes, and the like, which children are very capable of committing, and which they may in ſome circumſtances be under ſtrong temptations to commit; and therefore, tho' the taking away the life of a boy of ten years old may ſavour of cruelty, yet as the example of this boy's puniſhment may be a means of deterring other children from the like offences, and as the ſparing this boy merely on account of his age will probably have a quite contrary tendency,———in juſtice to the publick, the law ought to take its courſe, unleſs there remaineth any doubt touching his guilt. In this general principle all the judges concurred. But two or three of them, out of great tenderneſs and caution, adviſed the chief juſtice

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to ſend another reprieve for the priſoner; ſuggeſting that it might poſſibly appear to further enquiry, that the boy had taken this matter upon himſelf, at the inſtigation of ſome perſon or other, who hoped by the artifice to ſcreen the real offender from juſtice. Accordingly, the chief juſtice did grant one or two more reprieves; and deſired the juſtice who took the boy's examination, and alſo ſome other perſons in whoſe prudence he could confide, to make the ſtricteſt inquiry they could into the affair, and make report to him. At length he receiving no further light, determined to ſend no more reprieves, and to leave the priſoner to the juſtice of the law at the expiration of the laſt. But before the expiration of that reprieve, execution was reſpited till further order, by warrant from one of the ſecretaries of ſtate. And at the ſummer aſſizes 1757, he had the benefit of his majeſty's pardon, upon condition of his entring immediately into the ſea ſervice. *Foſt.* 70.

Under ſeven. 3. But within ſeven years of age, there can be no guilt whatſoever of any capital offence; the infant may be chaſtized by his parents or tutors, but cannot be capitally puniſhed, becauſe he cannot be guilty; and if he be indicted for ſuch an offence as is in its nature capital, he muſt be acquitted. 1 H. *H.* 19, 20.

Committing a rape. 4. An infant under 14, is preſumed by law, unable to commit a rape, and therefore it ſeems cannot be guilty of it; and though in other felonies *malitia ſupplet ætatem* in ſome caſes, yet it ſeems as to this fact the law preſumes him impotent, as well as wanting diſcretion. 1 *H. H.* 630.

Forcible entry. 5. An infant may be guilty of forcible entry, in reſpect of perſonal actual violence. 1 *Haw.* 147. And the juſtices may fine him therefore: but yet it ſhall be good diſcretion in the juſtices of the peace, to forbear the impriſonment of ſuch infant. *Dalt. c.* 126.

Becauſe it is ſaid, that he ſhall not be ſubjects to corporal puniſhment, by force of the general words of any ſtatute, wherein he is not expreſly named. 1 *Haw.* 147.

Shall be liable to damage for treſpaſs. 6. But if one who wants diſcretion, commit a treſpaſs, againſt the perſon or poſſeſſion of another, he ſhall nevertheleſs be compelled in a civil action to give ſatisfacton for the damage. 1 *Haw.* 2. 1 *H. H.* 15, 16.

May bring an appeal. 7. An infant may bring an appeal, although it take from the defendant the benefit of waging battle; but he muſt proſecute ſuch appeal by a guardian. 2 *Haw.* 161, 162.

An

An appeal likewiſe may be brought againſt him. 2 *Haw.* 168.

8. An infant under the age of diſcretion cannot be an approver; becauſe he cannot take the oath requiſite in that caſe. 2 *Haw.* 205. Cannot be an approver.

9. In caſe of rape committed upon a child of 12 years old, ſuch child may be ſworn as evidence; yea if ſhe be under that age, if it appear to the court that ſhe knows and conſiders the obligation of an oath, ſhe may be ſworn. And in caſe of evidence againſt witches, an infant of nine years old was ſworn. 1 *H. H.* 634. *Dalt.* 378. How far he may be a witneſs.

10. An infant before 21 years of age ſhall not be ſworn in an inqueſt. 7 *W. c.* 32. *ſ.* 4. 1 *Inſt.* 172. Whether he may be a juror.

11. A woman at 9 years of age may have dower; at 12 may conſent to marriage; and at 14 is of age of diſcretion, and may chuſe a guardian. 1 *Inſt.* 78. Woman's age of dower, marriage, and chuſing guardian.

12. A man is of age at 12 years to take the oath of allegiance in the torn or leet; and at 14 is of age of diſcretion, may conſent to marriage and chuſe his guardian. 1 *Inſt.* 78. Man's age of allegiance, marriage, and chuſing guardian.

13. At 21, and not before, perſons may bind themſelves by any deed, and alien lands, goods and chattels. 1 *Inſt.* 171. Cannot make a deed.

14. Upon which ground infants may not enter into recognizance to keep the peace, or to be of the good behaviour, but their ſureties only. Nor enter into recognizance.

15. But an infant may bind himſelf to pay for his neceſſary meat, drink, apparel, phyſick, and ſuch like; and alſo for his good teaching or inſtruction, whereby he may profit himſelf afterwards; but if he binds himſelf in an obligation or other writing, with a penalty for the payment of any of theſe, that obligation ſhall not bind him. 1 *Inſt.* 172. May contract for neceſſaries.

And in *Earl*'s caſe, 1 *Salk.* 387. it is ſaid, that an infant may buy neceſſaries, but cannot borrow money to buy; for he may miſapply the money, and therefore the law will not truſt him, but at the peril of the lender, who muſt lay it out for him, or ſee it laid out.

16. Alſo other things of neceſſity ſhall bind him, as a preſentation to a benefice; for otherwiſe the lapſe ſhall incur againſt him. 1 *Inſt.* 172. May preſent to a benefice.

17. And infants ſeiſed of eſtates in truſt, or by way of mortgage, may make conveyances thereof, as the courts of chancery or exchequer ſhall direct. 7 *An. c.* 19. 4 *G.* 3. *c.* 16. May convey in a court of equity.

18. And

May ſurrender in a court of equity.

18. And they may ſurrender leaſes in the courts of chancery or exchequer, in order to renew the ſame. 29 *G.* 2. *c.* 31.

May purchaſe.

19. Alſo an infant hath, without conſent of any other, capacity to purchaſe, for it is intended for his benefit; and at his full age, he may either agree thereunto, and perfect it, or without any cauſe to be alledged, waive, or diſagree to the purchaſe: and ſo may his heirs after him, if he agree not thereunto after his full age. 1 *Inſt.* 2.

May make a will.

20. The common law ſeems not to have determined preciſely, at what age one may make a teſtament of a perſonal eſtate: it is generally allowed, that it may be made at the age of 18, and ſome ſay under, for the common law will not prohibit the ſpiritual court in ſuch caſes. 1 *Inſt.* 89. 1 *H. H.* 17.

May be an executor.

21. A perſon is of age to be an executor at 17; and an adminiſtration of any one during the minority of an infant, ceaſeth when the infant comes to that age. 5 *Co. Pigot's* caſe. 1 *H. H.* 17.

May bequeath the tuition of his children.

22. Any perſon having child or children, under 21 years of age, and not married, may by deed or will atteſted by two witneſſes, diſpoſe of the cuſtody and tuition of ſuch child or children, until they ſhall be of the age of 21, or for a leſſer time; and this, whether ſuch parent be within or above the age of 21. 12 *C.* 2. *c.* 24. *ſ.* 8.

May ſue by prochein amy.

23. An infant cannot anſwer but by guardian; but he may ſue either by his next friend or by guardian. 3 *Salk.* 196.

In what caſe he may releaſe a debt.

24. If an infant of the age of 17 years releaſe a debt, this is void; but if an infant make the debtor his executor, this is a good releaſe in law of the action. 1 *Inſt.* 264.

At what age he may be bound apprentice.

25. By the 5 *El. c.* 4. Perſons above the age of 10 years by their own conſent and agreement, may be bound apprentices.

And by the 5 *El. c.* 5. Any perſon, above ſeven years old, may be bound apprentice to the ſea ſervice.

By the 43 *El. c.* 2. No age is limited for the binding of pariſh apprentices; ſo that it ſeemeth they may be bound at the age of ſeven, when they ceaſe to be nurſe children, and conſequently may be taken from the mother.

26. It

26. It ſhall be felony without benefit of clergy, to ſteal goods to the value of 40 s. out of an houſe, though the houſe be not broken open; but this ſhall not extend to apprentices under 15 years of age. 12 *An. ſt.* 1. *c.* 7. Infant apprentice embezilling goods.

27. Servants above the age of 18, imbezilling their maſter's goods to the value of 40 s. ſhall be puniſhed as felons. 21 *H.* 8. *c.* 7. Infant ſervant embezilling goods.

Information.

1. INFORMATIONS are of two kinds; 1. Such as are merely at the ſuit of the king: And, 2. Such as are partly the ſuit of the king, and partly the ſuit of the party; which are commonly called informations *qui tam*, from thoſe words in the information when the proceedings were in *latin*, *qui tam pro domino rege quam pro ſeipſo*, &c. 2 Haw. 259. Information at the ſuit of the king. At the ſuit of the party.

2. Of near affinity to an information *qui tam*, is an action upon the ſtatute: which is either a *private* action, which is, when an action is given upon a ſtatute to the king, and to the *party grieved* only; or, a *popular* action, which is, where the action is given to the king, or to any one that will ſue for the king and himſelf. *Wood. b.* 4. *c.* 4. Private action upon a ſtatute. Action popular.

3. But if the king commenceth his ſuit before the informer, the king ſhall have the whole forfeiture (becauſe in ſuch caſe he alſo is the informer); and he may, before the informer begins his ſuit, releaſe the penalty to the offender, and bar all others; but if after a popular action is brought by the informer, the king's attorney will enter *ulterius non vult proſequi*, the informer may proſecute for his part. *Wood. b.* 4. *c.* 4. In what caſe the king may have the whole penalty.

4. Where a matter concerns the publick government, and no particular perſon is intitled to an action, there an information will lie. 18 *El. c.* 5. *ſ.* 1. 1 *Salk.* 374. In what caſes an information will lie.

5. An information lies, at the *common law*, for a great variety of crimes leſs than capital, as batteries, cheats, perjuries, riots, extortions, nuſances, contempts, and ſuch like; and alſo it lies in very many caſes by *ſtatute*, wherein

wherein the offender is liable to a fine or other penalty. *Finch* 340. 2 *Haw.* 260.

6. And in general, it ſeems that of common right an information *at the ſuit of the king*, or an action in the nature thereof, may be brought for offences againſt ſtatutes, whether they be mentioned by ſuch ſtatutes or not, unleſs other methods of proceeding be particularly appointed, by which all others are impliedly excluded. 2 *Haw.* 260.

7. But an information or action *qui tam* will not lie on any ſtatute, which prohibits a thing as being an immediate offence againſt the publick good in general, under a certain penalty, unleſs the whole or part of ſuch penalty be expreſly given to him who will ſue for it; becauſe otherwiſe it goes to the king, and nothing can be demanded by the party: But where ſuch ſtatute gives any part of ſuch penalty to him who will ſue for it by action or information, any one may bring ſuch action or information, and lay his demand, *as well for our lord the king, as for himſelf.* 2 Haw. 256.

8. Alſo where a ſtatute prohibits or commands a thing, the doing or omiſſion whereof is an immediate danger to the party, and alſo highly concerns the peace, ſafety, or good government of the publick, or the honour of the king, or of his ſupreme courts of juſtice, it ſeems to be the general opinion, that the party grieved may bring his action *qui tam* on ſuch ſtatute. 2 *Haw.* 265.

In what time it ſhall be brought.

9. By the 31 El. c. 5. *All actions, ſuits, bills, indictments, or informations on any penal ſtatute, whereby the forfeiture is limited to the king, ſhall be brought within two years after the offence committed; if limited to the king, and to any other who ſhall proſecute, then within one year; and in default of ſuch proſecution, then to be brought for the king, in two years after that year ended. Provided, that if they are limited by ſtatute to be brought within ſhorter time, then they ſhall be brought within ſuch time limited.* ſ. 5, 6.

On any penal ſtatute] But if an offence prohibited by a penal ſtatute, be alſo an offence at common law; the proſecution of it, as of an offence at common law, is no way reſtrained hereby. 2 *Haw.* 272.

To any other who ſhall proſecute] That is, to a common informer; and therefore the party grieved is not within the reſtraint of this ſtatute, but may ſue in the ſame manner as before. 2 *Haw.* 272.

10. If

10. If two informations be exhibited on the ſame day, for the ſame offence, they mutually abate one another. 2 *Haw.* 275. Two informations on the ſame day.

11. By the 21 J. c. 4. *All offences againſt any penal ſtatute, for which any common informer may ground a popular action, bill, plaint, ſuit, or information, before the judges of aſſize, or juſtices of the peace in their general or quarter ſeſſions (having power to hear and determine the ſame), ſhall be proſecuted in the county where they were committed, and not elſewhere: and if the offence is not proved to have been committed in the ſame county the defendant ſhall be found not guilty.* ſ. 1, 2. In what county it ſhall be laid.

Provided that information, ſuits, or actions, againſt popiſh recuſants, or perſons charged with maintenance, champerty, or buying of titles, may be laid in any county. ſ. 5.

Againſt any penal ſtatute] *H.* 8 *W. K.* and *Gaul. Holt* Ch. J. ſaid, ten judges had agreed that this ſtatute doth not extend to any offence created ſince; ſo that proſecutions on ſubſequent penal ſtatutes are not reſtrained thereby; but this ſtatute is as to them, as it were repealed *pro tanto.* 1 Salk. 372.

For which any common informer may ground a popular action] Therefore this extends not to any ſuit by a party grieved, or by the attorney general; but only to thoſe brought by common informers. 2 *Haw.* 269, 270.

General or quarter ſeſſions, having power to hear and determine the ſame] Yet this gives no juriſdiction to juſtices of the peace, which they had not before; but only appoints, that where informations might have been brought in the courts at *Weſtminſter* or before juſtices of the peace, ſuch informations ſhall be now brought before juſtices of the peace only. *Cro. Car.* 112.

In the county where they were committed] *H.* 7 *G. Smith* and *Potter.* In the king's bench. In a *qui tam* on the 5 *Eliz.* for exerciſing a trade, without an apprenticeſhip, it was moved to ſtay the proceedings, becauſe the nominal plaintiff had releaſed, and the fact was laid at *Cambridge*, whereas the juriſdiction of the king's bench is at laſt ſettled to be reſtrained by the 21 *J. c.* 4. to actions ariſing in the county where the king's bench ſits, ſo that if they were to go on to trial, the plaintiff could have no effect of his ſuit. And of this opinion was the

court, and they made a rule that proceedings ſhould be ſtayed. *Str.* 415.

And not elſewhere] But where a ſubſequent ſtatute gives a remedy for the recovery of a penalty in any court of record generally, it ſo far impliedly repeals this reſtraint, and conſequently leaves the informer at his liberty to ſue in the courts at Weſtminſter. 2 *Haw.* 270.

Alſo, where a ſtatute limits ſuits by an informer *qui tam*, to other courts than thoſe of *Weſtminſter hall*; yet any one may, by conſtruction of law, exhibit an information in the exchequer, for the whole penalty, for the uſe of the king. 2 *Haw.* 268.

Seſſions hath not power without expreſs words.

12. If juriſdiction be given to the ſeſſions to hear and determine, and it is not ſaid by information; this ſhall be be by indictment, and not information. *Cro. Car.* 112.

Time of exhibiting the information to be entred.

13. By the 18 El. c. 5. *Upon every information which ſhall be exhibited by a* (common) *informer, except for maintenance, champerty, buying of titles, or embracery; a note ſhall be made of the day, month, and year of the exhibiting thereof; and it ſhall be taken to be of record from that time forward and not before: and no proceſs ſhall be iſſued on ſuch information, till it be exhibited in form aforeſaid.* ſ. 1.

Oath to be made on exhibiting the information.

14. And by the 21 J. c. 4. *No officer ſhall enter any information, bill or plaint, count or declaration, till the informer hath made oath before ſome of the judges of the court, that the offence was not committed in any other county, and that he believeth in his conſcience, that the offence was committed within a year before the information or ſuit; the oath to be there entred of record.* ſ. 3.

Recognizance to be given.

15. And in the court of king's bench, *the clerk of the crown ſhall not (except by order of court) exhibit or receive any information in the name of the maſter of the crown office, for treſpaſſes, batteries, or other miſdemeanors, or iſſue any proceſs thereupon, before he ſhall have taken, or ſhall have delivered to him a recognizance from the proſecutor, with his place of abode, title, or profeſſion to be entred,—to the perſon againſt whom the information is exhibited, in the penalty of 20 l. that he will effectually proſecute ſuch information, and abide by and obſerve ſuch orders as the ſaid court ſhall direct; which recognizance the ſaid clerk of the crown, and alſo every juſtice of the peace where the cauſe of ſuch information ſhall ariſe, are impowered to take; after the taking or receipt whereof, he ſhall make an entry thereof upon record,*

and

and ſhall file a memorandum thereof in ſome publick place in his office, to which all perſons may reſort without fee. 21 J. c. 4. ſ. 2, 6.

In the name of the maſter of the crown office] From hence it follows, that informations exhibited by the attorney general, remain as they were at the common law. 2 *Haw.* 262.

Rule to ſhew cauſe.

16. And the general practice of the court of king's bench is, not to order an information to be filed, without firſt making a rule upon the defendant to ſhew cauſe to the contrary. And this rule is never granted but upon motion in open court, grounded upon affidavit of ſome offence of an enormous kind, or dangerous tendency. The defendant muſt be perſonally ſerved with the rule, and if he do not at the day given for that purpoſe ſatisfy the court by affidavits, that the ſubſtance of the charge is falſe or frivolous, or other reaſonable cauſe againſt the proſecution, the court uſually grants the information. *Barl.* Inform.

Proceſs on an information.

17. By the 21 J. c. 4. *The like proceſs ſhall be awarded, upon an information by a common informer, as in an action of treſpaſs* vi & armis *at the common law.* ſ 1.

And conſequently, the proceſs in all ſuch ſuits muſt be by attachment, or *pone per vadios*, and after by diſtreſs infinite, where by the return the party appears to be ſufficient, otherwiſe by *capias*. 2 Haw. 284.

Proceſs to be indorſed.

18. And *on every proceſs upon an information by a common informer, ſhall be indorſed as well the party's name that purſueth the proceſs, as alſo the ſtatute upon which the information is grounded.* 18 El. c. 5. ſ. 1.

Proceſs on a criminal information.

19. But on a *criminal* information, it is the uſual practice of the crown office, firſt, to award a *ſubpœna*; and after the return thereof, if no appearance be entred in four days, and an affidavit be made of the ſervice of the *ſubpœna*, to make out a *capias* of courſe, where the defendants are informed againſt in their private capacity, and a *diſtringas*, where they are ſued as a corporation aggregate. 2 *Haw.* 284.

General iſſue.

20. *If any information, ſuit, or action, ſhall be brought againſt any perſon on a penal ſtatute, the defendant may plead the general iſſue, and give the ſpecial matter in evidence.* 21 J. c. 4. ſ. 4.

Information not quaſhed upon motion.

21. The court will not generally quaſh an information upon motion, but the party muſt either plead, demur, or

or move in arreſt of judgment. 1 *Salk.* 372. *Str.* 185 953.

Certainty required in an information.

22. But ſeeing that an information differs from an indictment in little more than this, that the one is found by the oath of 12 men, and the other is not ſo found but is only the allegation of the officer or perſon who exhibits it; whatſoever certainty is required in an indictment, the ſame at leaſt is neceſſary alſo in an information; and conſequently as all the material parts of the crime muſt be preciſely found in the one, ſo muſt they be preciſely alledged in the other, and not by way of argument or recital. 2 *Haw.* 260, 1.

Not aided by the ſtatutes of jeofails.

23. And therefore the ſtatutes of jeofails (from *J'ay faillé*, I have failed), or the ſtatutes that do remedy overſights in pleading, extend not to information. *Wood. b.* 4. *c.* 4.

Information good as to part.

24. If an information contain ſeveral offences againſt a ſtatute, and be well laid as to ſome of them, but defective as to the reſt, the informer may have judgment for ſo much as is well laid. 2 *Haw.* 266.

Coſts againſt the plaintiff.

25. Generally, *if a* (common) *informer ſhall willingly delay his ſuit, or diſcontinue, or be nonſuit, or ſhall have a verdict or judgment againſt him, he ſhall pay coſts to the defendant.* 18 El. c. 5. ſ. 3.

And in the court of king's bench particularly, *if the defendant ſhall appear and plead to iſſue, and the proſecutor ſhall not at his own coſts, within a year after iſſue joined, procure the ſame to be tried, or if a verdict paſſes for the defendant, or the informer procure a* noli proſequi *to be entred, the ſaid court of king's bench may award the defendant his coſts, unleſs the judge ſhall certify that there was a reaſonable cauſe for exhibiting ſuch information. And if the informer ſhall not, in three months after ſuch coſts taxed, and demand made, pay the ſame, the defendant ſhall have the benefit of the recognizance abovementioned, to compel him thereunto.* 4 & 5 W. c. 18. ſ. 2.

Unleſs the judge ſhall certify] *E.* 13 *G.* 2. *K.* and *Woodfall.* Upon trial of an information for a libel, the jury acquitted the defendant contrary to the direction of the court. Upon which the defendant moved above for coſts on this ſtatute, which provides, that in caſes where the defendant is acquitted, the court is authorized to award coſts to the defendant, unleſs the judge ſhall at the trial certify there was a reaſonable cauſe. In this caſe, no ſuch certificate was aſked; but it was inſiſted on for the

the proſecutor, that it was diſcretionary in the court. The chief juſtice certified *ore tenus*, that it was a verdict againſt evidence; but then he and all the others held, that it was now too late to inquire into the probable cauſe; and that it was not diſcretionary, but compulſory upon them, where there was no certificate. So the defendant had his coſts. *Str.* 1131.

Coſts againſt the defendant.

26. But it ſeems to be in a great meaſure ſettled, that, an *informer* upon a popular ſtatute ſhall in no caſe whatſoever have his coſts, unleſs they be expreſly given him by ſuch ſtatute; for it is certain, that he cannot recover them by the common law, for that doth not give coſts in any caſe: neither can he recover them by the ſtatute of *Glouceſter*, which gives the demandant his coſts in all caſes wherein he ſhall recover his damages; for this ſeems to ſuppoſe ſome damage to have been done to the demandant in particular, which cannot be ſaid in any popular action. But it ſeems agreed, that an action on a ſtatute *by the party grieved*, for a certain penalty given by ſuch ſtatute, is within the ſtatute of *Glouceſter*, becauſe ſuch penalty is intended him by way of recompence for his particular damage by the offence prohibited: and if he could recover that only, and no more by way of coſts, it would be in moſt caſes in vain for him to ſue for it, ſince the coſts of ſuit would exceed it. But it is ſaid, that no coſts ſhall be recovered in an action on a ſtatute, which gives no *certain* penalty to the party grieved, but only his *damages* in general, if ſuch a ſtatute be introductive of a new law, and give a remedy in a point not remediable at the common law; but there is not that inconvenience in this caſe, as in the former; becauſe no certain ſum being ſpecified, the jury may give the plaintiff a full ſatisfaction by way of damages. 2 *Haw.* 274.

Informer compounding.

27. *No* (common) *informer ſhall compound or agree with the defendant, but after anſwer made in court, nor after anſwer, but by the order or conſent of the court; on pain of being ſet on the pillory, in ſome market town next adjoining, in open market, for two hours, and of being diſabled to be informer on any penal ſtatute, and alſo of forfeiting* 10 *l. half to the king, and half to the party grieved, to be recovered in any court of record, by action of debt or information. And the juſtices of aſſize, and juſtices of the peace in ſeſſions, may hear and determine all offences againſt this act.* 18 El. c. 5. ſ. 4.

Collusive action. 28. *And if the defendant plead a recovery by a former action, which former action shall be found to have been collusive; the plaintiff shall recover, as though no such action before had been had: and if the defendant shall be convicted of such collusion, he shall be imprisoned two years, by process of* capias *and outlawry, and that as well at the king's suit, as of every other that will sue.* 4 H. 7. c. 20.

And no release of any common person, to any such party, whether before or after any action popular, or indictment of the same commenced or made, hanging the same action, shall be available to surcease the said action, indictment, process, or execution. id.

Form of an Information *qui tam.*

Westmorland. BE *it remembred, that* A. I. *of*———*in the county of*——— *gentleman, who as well for our lord the now king as for himself doth prosecute, cometh before the justices of our said lord the king assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, at their general quarter sessions of the peace holden at*——*in and for the said county, the*——— *day of*———*in the*———*year of the reign of*———*in his proper person; and as well for the same lord the king, as for himself, giveth the court here to understand and be informed, That* A. O. *late of*———*in the county aforesaid yeoman, on the*——*day of*——*in the year aforesaid, at*———*aforesaid, in the county aforesaid, not regarding the laws and statutes of our said lord the king, but intending to*———*with force and arms* [Here insert the offence with the same precision as in an indictment] *against the form of the statute in that case made and provided: Whereupon the aforesaid* A. I. *as well for the said lord the king, as for himself, prayeth the advice of this court in the premisses; and that the aforesaid* A. O. *may forfeit the sum of*——*according to the form of the statute aforesaid; and that he the same* A. I. *may have one moiety thereof, according to the form of the statute aforesaid; and also that the aforesaid* A. O. *may come here into this court, to answer concerning the premisses; and there are pledges of prosecuting,* John Doe *and* Richard Roe. *And hereupon it is commanded to the said* A. O. *that all other things omitted, and all excuses laid aside, he be in his proper person at the next general quarter sessions of the peace to be holden for the said county, to answer as well to our said lord*

the

the king, as to the ſaid A. I. *who as well for the ſaid lord the king, as for himſelf, doth proſecute, of and concerning the premiſſes, and further to do and receive what the ſaid court ſhall conſider in this behalf.*

Ingroſſing. See Foreſtalling.
Inns, Innkeepers. See Alehouſes.
Inſolvent debtors. See Debtors.

Inrollment.

NO manors, lands, tenements, or hereditaments ſhall paſs from one to another, whereby any eſtate of inheritance or freehold ſhall be made or take effect in any perſon, or any uſe thereof to be made by reaſon only of any bargain and ſale thereof, except the ſame bargain and ſale be made by writing indented, ſealed, and inrolled in one of the king's courts of record at *Weſtminſter*; or elſe whithin the county where the lands lie, before the *cuſtos rotulorum*, and two juſtices, and the clerk of the peace, or two of them at the leaſt, whereof the clerk of the peace to be one: the ſame inrollment to be made in ſix months after date of the writings: Paying, where the land exceeds not 40 s. a year, 2 s. to wit, 12 d. to the juſtices and 12 d. to the clerk; and where it exceeds 40 s. a year, then paying 5 s. half to the juſtices, and half to the clerk: and the clerk of the peace ſhall inroll and ingroſs the ſame in parchment: The ſame to be kept amongſt the records of the county. 27 *H.* 8. *c.* 16.

In the counties of *Lancaſter*, *Cheſter*, and *Durham*, they may be inrolled in the reſpective courts there, or at the aſſizes. 5 *El. c.* 26.

The inrolling of deeds and wills of papiſts, belongs to title Popery.

Judg-

Judgment.

Judgments certain.

1. OF judgments, ſome are fixed and ſtated; as in caſes of treaſon, felony, præmunire, and miſpriſions; the particular forms of which may be ſeen under their reſpective titles.

Judgments variable.

2. Others are diſcretionary and variable, according to the different circumſtances of each caſe; Thus for crimes of an infamous nature, ſuch as petit larceny, perjury, or forgery at common law, groſs cheats, conſpiracy not requiring a villainous judgment, keeping a bawdy houſe, bribing witneſſes to ſtifle their evidence, and other offences of the like nature; it ſeems to be in a great meaſure left to the prudence of the court to inflict ſuch corporal puniſhment, and alſo ſuch fine, and binding to the good behaviour for a certain time, as ſhall ſeem moſt proper and adequate to the offence. 1 *Haw.* 445.

Judgment in the offender's abſence.

3. The court may aſſeſs a fine, but cannot award any corporal puniſhment againſt a defendant, unleſs he be actually preſent in court. 2 *Haw.* 446.

Judgment of a joint fine.

4. Where there are ſeveral defendants, a joint award of one fine againſt them all, is erroneous; for it ought to be ſeveral againſt each defendant; for otherwiſe, one who hath paid his proportionable part, might be continued in priſon till all the others have alſo paid theirs, which would be in effect to puniſh him for the offence of another. 2 *Haw.* 446.

Judgment in mitigation of fines.

5. A fine is under the power of the court, during the term in which it is ſet; and may be mitigated as ſhall be thought proper: but after the term, it admits of no alteration. 2 *Haw.* 446.

Judgment againſt the verdict.

6. A judgment contrary to the verdict is void. *Read.* Judgm.

Judgment by particular ſtatutes.

7. By many ſtatutes peculiar puniſhments are appointed for ſeveral offences, as pillory, ſtocks, impriſonment and the like; and in all theſe caſes, no room is left for the juſtices diſcretion, for they ought to give Judgment, and to inflict the puniſhment in all the circumſtances thereof, as ſuch ſtatutes do direct. *Dalt. c.* 188.

Jurors.

NOTE; The ſtatutes of the 4 & 5 *W.* *c.* 24. and 7 & 8 *W.* *c.* 32. hereafter following, were at firſt but temporary; but are referred to, and as it were adopted by the 3 *G.* 2. *c.* 25. Which act of the 3 *G.* 2. *c.* 25. is made perpetual by the 6 *G.* 2. *c.* 37. And all the ſaid three acts of 4 & 5 *W.* 7 & 8 *W.* and 3 *G.* 2. are required to be read at every *Mid-ſummer* ſeſſions.

Trial by juries is the *Engliſhman*'s birth right, and is that happy way of trial, which notwithſtanding all revolutions of times, hath been continued beyond all memory to this preſent day; the beginning whereof no hiſtory ſpecifies, it being contemporary with the foundation of this ſtate, and one of the pillars of it, both as to age and conſequence. *Tr. p. pais* 3. *Dalt.* *c.* 186.

Concerning which I will treat in the order following:

I. Who may or may not be jurors.
II. Of making and returning liſts of jurors.
III. Of the ſheriff's ſummoning and returning jurors.
IV. Of the challenge of jurors.
V. Of the demeanor of jurors in giving their verdict.
VI. Of the indemnity and puniſhment of jurors.

I. Who

I. Who may or may not be jurors.

Grand jurymen.

1. Mr. *Hawkins* ſays, it doth not ſeem to be any where holden, that none but freeholders ought to be returned on a grand jury. 2 *Haw.* 216, 217.

But in another place he ſays, that by the common law, every grand juryman ought to be a freeman. 1 *Haw.* 215.

And L. *Hale* ſays, touching the yearly value of the eſtate of a grand juryman, he doth not find any thing determined; but freeholders they ought to be. 2 *H. H.* 155.

But in *Yorkſhire*, they are to have 80 l. a year, freehold or copyhold. 7 & 8 *W.* *c.* 32. *ſ.* 8.

Alſo a grand juryman muſt be a lawful liege ſubject; and conſequently, neither under attainder of any treaſon or felony, nor an alien, nor outlawed, whether for a criminal matter, or as ſome ſay, in a perſonal action; and from hence it ſeems, that any one who is under a proſecution for any crimes, may by the common law, before he is indicted, challenge any of the perſons returned on the grand jury, for the defect of any of the qualifications aboveſaid. 1 *Haw.* 215.

The grand jury ought not to conſiſt of an indefinite number; for no more ought to be ſworn than twenty-three. For if a number, amounting to two full juries or more, ſhould be ſworn, it might happen that a compleat jury of twelve might find a bill to be true, though other twelve or more of the ſame jury might reject it as untrue; which would be inconvenient and abſurd. *Burrow*, *Mansfield.* 1088.

Jurymen in the courts at Weſtminſter.

2. In the courts at *Weſtminſter*, and city of *London*, the jurors ſhall be houſholders within the city, and have lands, tenements, or perſonal eſtate, to the value of 100 l. 3 *G.* 2. *c.* 25. *ſ.* 19, 20.

And by the 4 *G.* 2. *c.* 7. *ſ.* 3. Leaſeholders in the county of *Middleſex*, where the improved rents or value ſhall amount to 50 l. a year, over and above the ground rent or other reſervations, ſhall be liable to ſerve on juries.

3. At

3. At the aſſizes or ſeſſions in the country, every juror, other than ſtrangers *per medietatem linguæ* in *England*, ſhall have in his own name, or in truſt for him, within the county, 10 l. a year, and in *Wales* 6 l. a year, above reprizes, of freehold or copyhold lands or tenements, or of lands and tenements of ancient demeſne, or in rents, or in all or any of them, in fee ſimple, fee tail, or for the life of themſelves, or ſome other perſon: and if any of a leſſer eſtate be returned, he may be diſcharged upon challenge, or on his own oath. 4 & 5 *W.* *c.* 24. *ſ.* 15. 3 *G.* 2. *c.* 25. *ſ.* 20. At the aſſizes or ſeſſions.

And by the 3 *G.* 2. *c.* 25. *ſ.* 18. Perſons having an eſtate in poſſeſſion in land in their own right, of 20 l. a year above the reſerved rent, being held by leaſe for 500 years or more, or for 99 years, or any other term, determinable on one or more lives, ſhall be liable to ſerve on juries.

From hence it appears, that lands *freehold*, *copyhold*, *ancient demeſne*, or *leaſehold*, do render perſons liable to ſerve on juries. And ſome have thought that all lands are included under theſe denominations. And in *Coke's copyholder*, *p.* 14. it is ſaid, that what land ſoever is not copyhold, is freehold. And in *Calthr.* 41. it is ſaid, that copyhold lands may differ in name, but not in nature; for although copyhold lands be ſpecially ſo called, becauſe holden by copy of court roll, and cuſtomary lands by ſome ſpecial cuſtom; yet they are all holden in one general kind, that is, by cuſtom and the diverſity of their names doth not alter the nature of their tenure. Nevertheleſs, although all copyhold lands are cuſtomary, yet all cuſtomary lands are not copyhold, and conſequently, as ſuch, do not qualify a man to ſerve on juries. Of which kind of cuſtomary lands not being copyhold, the greater part of the county of *Weſtmorland* in particular doth conſiſt. For which cauſe (and by reaſon of the number of perſons diſqualified by being quakers) the jurors in that county are in compariſon but few. To remedy which inconvenience, it ſeemeth not unreaſonable, that in the ſtatutes limiting the qualification of jurors, amongſt other denominations of tenure, the word *cuſtomary* ſhould be inſerted; for why ſhould a copyholder of 10 l. a year be obliged to ſerve, and a cuſtomary tenant of 100 l. a year be exempted?

4. As

Jurors on trials of foreigners.

4. As to the ſtrangers *per medietatem linguæ* abovementioned, it is enacted by the 28 *Ed.* 3. *c.* 13. that in inqueſts to be taken amongſt aliens and denizens, before any judges, one half of the inqueſt ſhall be denizens, and the other half aliens, if ſo many there be in the place who are not parties; if not, then ſo many as there are.

And by the 17 *Ed.* 3. *ſt.* 2. *c.* 8. Before the mayor of the ſtaple, if both parties be ſtrangers, the inqueſts ſhall be taken by ſtrangers; if both be denizens, by denizens; if the one party be denizen, and the other alien, half of the jury ſhall be denizens, and half aliens.

And theſe aliens need not have any qualification by their eſtate. 8 *H.* 6. *c.* 29.

But it ſeems that the *Engliſh* half of the jury ought to have eſtates of the ſame value as in other caſes. 2 *Haw.* 419.

But by the 13 & 14 *C.* 2. *c.* 11. *ſ.* 11. In actions concerning tonnage and poundage, or ſhips or goods to be forfeited by reaſon of unlawful importation or exportation, there ſhall not be any party jury, but ſuch only as are natural born ſubjects.

Jurors in towns corporate.

5. In towns corporate: Trials of felons ſhall be by men worth 40 l. in goods, though they have no freehold. 23 *H.* 8. *c.* 13.

And in 3 *Salk.* 81. it is ſaid, that when the jury are of a town corporate, it is no challenge that they are not freeholders.

And the ſtatutes which require jurors to be of ſuch and ſuch ſufficiency, do generally except cities, boroughs, and towns corporate.

In the torn.

6. In the torn: Jurors ſhall have 20 s. a year freehold; or 26 s. 8 d. copyhold. 1 *R.* 3. *c.* 4.

In the leet.

7. In the leet: It is ſaid by ſome books, that any perſon happening to be preſent at a court leet, or to be riding by the place where it is holden, may for the want or jurors be compelled by the ſteward to be ſworn, whether he be reſident within the precincts of the leet, or not: by which it ſeems to be implied, that any perſon whatſoever is capable of being put upon the jury in a court leet. 2 *Haw.* 69.

On the coroner's inqueſt.

8. The coroner's jury, upon inqueſts taken before him, are to be of the neighbouring towns; but no qualification by eſtate is required by any ſtatute. 2 *H. H.* 152.

9. Jurors to inquire of the concealments of other inqueſts, ſhall have lands of 40 s. a year. 3 *H.* 7. *c.* 1. On other jurors concealing preſentments.

10. Jurors to inquire of forcible entry or detainer, ſhall have lands or tenements of 40 s. a year. 8 *H.* 6. *c.* 9. On inquiries of forcible entry.

11. Jurors to inquire of riots, ſhall have 20 s. a year, charter land, or freehold; or 26 s. 8 d. copyhold. 19 *H.* 7. *c.* 13. On inquiries of riots.

12. In *Yorkſhire:* No perſon having 150 l. a year, of ſuch eſtate as will qualify him to ſerve on juries, ſhall be ſummoned to the ſeſſions; but only perſons leſs able to bear the expence of attending the aſſizes. 1 *An. ſt.* 2. *c.* 13. *ſ.* 3. And if he doth ſerve at the ſeſſions it ſhall not ſatisfy his turn, but he ſhall attend the aſſizes nevertheleſs. 10 *An. c.* 14. *ſ.* 6. In Yorkſhire.

13. Young men under 21 years of age, ſhall not ſerve upon juries. 7 & 8 *W. c.* 32. *ſ.* 4. Perſons under age.

14. Old men above 70, perſons continually ſick, or being diſeaſed at the time of the ſummons, or not dwelling in the county, ſhall not be put in juries of petit aſſizes; on pain of the ſheriff paying damages to the party grieved, and being amerced to the king. 13 *Ed.* 1. *ſt.* 1. *c.* 38. Perſons above age, infirm, abſent.

And the equity of this ſtatute, and alſo the reaſon of the thing, ſeem plainly ſo far to extend to grand juries, that if it ſhall appear, that any of the perſons abovementioned be returned on a grand jury, the court will eaſily excuſe their non-appearance. But it ſeems clear, that any ſuch perſons being returned on a grand jury, may lawfully ſerve upon it if they think fit. 2 *Haw.* 216.

15. The jury ought to be men; yet there ſhall be a jury of women, to try if a women be enſient, upon the writ *de ventre inſpiciendo.* Tr. p. pais 86. In what caſe women ſhall be jurors.

16. By the 5 *H.* 8. *c.* 6. and 18 *G.* 2. *c.* 15. Freemen of the company of ſurgeons in *London*, are exempted from ſerving upon juries. Surgeons.

17. And by the 6 & 7 *W. c.* 4. Apothecaries, within *London* and ſeven miles thereof, being free of the company; and country apothecaries, who have ſerved ſeven years apprenticeſhip, ——— ſhall be exempted from ſerving on juries, and their return ſhall be void, unleſs they ſhall voluntarily conſent to ſerve. 6 & 7 *W. c.* 4. Apothecaries.

18. Clergy-

Clergymen.

18. Clergymen cannot be impanelled upon juries. *Lamb.* 396.

Diſſenting teachers.

19. Diſſenting teachers, qualified under the toleration act, are exempted from ſerving on juries. 1 *W.* *c.* 18. *ſ.* 11.

Quakers.

20. Alſo quakers. 7 & 8 *W.* *c.* 34. *ſ.* 6.

Writs of exemption.

21. By the 4 & 5 *W.* *c.* 24. *ſ.* 21. No writ *de non ponendis in aſſiſis & juratis*, ſhall be granted, unleſs upon oath made, that the ſuggeſtions upon which it is granted, are true.

And the jurors ought to come in perſon and claim their privilege; for the ſheriff cannot return it. *Tr. p. pais* 87.

II. Of making and returning liſts of jurors.

Precepts to the high and petty conſtables.

1. The juſtices at *Midſummer* ſeſſions, ſhall iſſue forth their warrants (A) under the hands and ſeals of two or more of them, to the high conſtables, requiring them to iſſue forth their precept to the petty conſtables, thereby directing and requiring them to make and return true liſts in writing, of the names and places of abode, of all perſons within their reſpective conſtablewicks, qualified to ſerve on juries, with their titles and additions, between the ages of 21 and 70. High conſtable failing to iſſue his precept, ſhall forfeit 10 l. on conviction at the aſſizes or ſeſſions. 7 & 8 *W.* *c.* 32. *ſ.* 4. 8 & 9 *W.* *c.* 10. 3 & 4 *An.* *c.* 18. *ſ.* 5.

Petty conſtables may inſpect the rates.

2. The petty conſtables, on requeſt to any pariſh officer who ſhall have in his cuſtody any of the rates for the poor or land tax, ſhall have free liberty to inſpect ſuch rates, and take from thence the names of freeholders, copyholders, or other perſons qualified to ſerve on juries, dwelling within their reſpective precincts. 3 *G.* 2. *c.* 25. *ſ.* 1.

Liſts to be put upon the church door.

3. And ſhall yearly, 20 days at leaſt before *Michaelmas*, upon two or more *ſundays*, fix on the door of the church, chapel, and every other publick place of religious worſhip, an exact liſt of perſons intended to be returned; and ſhall leave at the ſame time a duplicate thereof, with a churchwarden or overſeer, to be peruſed by the pariſhioners without fee, to the end that notice may be given of perſons qualified who are omitted, or

or of perſons inſerted by miſtake who ought to be omitted. 3 *G.* 2. *c.* 25. *ſ.* 1.

4. And if ſuch petty conſtable ſhall wilfully omit any perſon who ought to be inſerted, or inſert any one who ought to be omitted, or ſhall take any reward for omitting or inſerting any perſon; he ſhall forfeit 20 s. on conviction before one juſtice, on confeſſion, or oath of one witneſs; half to the informer and half to the poor of the pariſh or place, for which the liſt is returned: if not paid in five days, to be levied by diſtreſs. And ſuch juſtice ſhall, in writing under his hand, certify the ſame to the next ſeſſions; who ſhall direct the clerk of the peace to inſert or ſtrike out the name of ſuch perſon ſo inſerted or omitted wrongfully. 3 *G.* 2. *c.* 25. *ſ.* 2.

Penalty on the petty conſtable, for inſerting perſons wrongfully.

5. The ſaid petty conſtables, at *Michaelmas* ſeſſions, ſhall deliver in the liſts in open court. 7 & 8 *W.* *c.* 32. *ſ.* 4.

Liſts to be delivered in at the ſeſſions.

Or inſtead of this after they have compleated their liſts, it ſhall be ſufficient if they ſubſcribe the ſame in the preſence of one juſtice, and at the ſame time atteſt the truth thereof upon oath to the beſt of their knowledge or belief: And then the ſaid liſts, being firſt ſigned by the juſtice, and ſubſcribed as aforeſaid, ſhall be delivered by the ſaid petty conſtables to the high conſtables, who ſhall deliver in the ſame at the ſaid ſeſſions in open court, atteſting at the ſame time upon oath the receipt of ſuch liſts from the petty conſtables, and that no alteration hath been made therein ſince their receipt thereof. 3 *G.* 2. *c.* 25. *ſ.* 7.

6. The conſtable failing to make return, ſhall forfeit 5 l. to the king, to be recovered by bill, plaint, or information. 7 & 8 *W.* *c.* 32. *ſ.* 4.

Penalty on petty conſtables for not returning liſts.

7. And if any perſon, not qualified, ſhall find his name mentioned in ſuch liſt, and the perſon required to make ſuch liſt ſhall refuſe to omit him, or think it doubtful whether he ought to be omitted; the juſtices at the ſeſſions to which the liſts ſhall be returned, on ſatisfaction from the oath of the party complaining, or other proof that he is not qualified, may order his name to be ſtruck out, or omitted to be entred in the book. 3 *G.* 2. *c.* 25. *ſ.* 1.

Perſons not qualified, how diſcharged.

Liſts to be entred by the clerk of the peace;

8. The juſtices ſhall then cauſe the liſts to be fairly entred in a book by the clerk of the peace, to be by him provided and kept for that purpoſe amongſt the records of the ſeſſions. 7 & 8 *W.* *c.* 32. *ſ.* 4.

on pain of 20 l.

9. Clerk of the peace neglecting his duty herein, ſhall forfeit 20 l. to him who ſhall ſue by indictment at the ſeſſions. 3 *G.* 2. *c.* 25. *ſ.* 2.

Duplicates thereof to be delivered to the ſheriff.

10. Duplicates of the ſaid liſts, when delivered in at the ſeſſions, and entered in ſuch book to be kept by the clerk of the peace for that purpoſe, ſhall during the ſaid ſeſſions, or within ten days after, be delivered by the clerk of the peace to the ſheriff. 3 *G.* 2. *c.* 25. *ſ.* 2.

The ſame to be entred by the ſheriff.

11. And the ſheriff ſhall immediately take care, that the names ſhall be entred alphabetically, with their additions and places of abode, in a book to be kept by him for that purpoſe. 3 *G.* 2. *c.* 25. *ſ.* 2.

Sheriff ſhall return none but thoſe in the duplicates.

12. And if the ſheriff ſhall ſummon and return any perſon to the aſſizes, whoſe name is not in the duplicates; the judge may on examination in a ſummary way, fine him not exceeding 10 l. nor leſs than 40 s. 3 *G.* 2. *c.* 25. *ſ.* 3.

III. Of the ſheriff's ſummoning and returning jurors.

Sheriff to ſummon jurors to the ſeſſions.

1. By a clauſe in the commiſſion of the peace, it is ſaid,——We command our ſheriff, that at certain days, which you (the juſtices) ſhall make known to him, he cauſe to come before you ſo many and ſuch good and lawful men of his bailiwick (as well within liberties as without) by whom the truth ſhall be the better known and inquired into.

Whether the ſeſſions may order a jury to be returned immediately.

2. It ſeems that juſtices of the peace may not order a jury to be returned immediately, nor on the ſame day, for the trial of a priſoner arraigned before them, as juſtices of gaol delivery may, unleſs the crime amount to felony, or the party conſent to be tried immediately. 2 *Haw.* 406.

Whether by award of the court without precept.

3. Alſo it ſeems that a jury may not regularly be returned before juſtices of the peace in their ſeſſions, by a bare award of the court, as before juſtices of gaol

gaol delivery; but that there ought to be a particular precept to the ſheriff for that purpoſe. 2 *Haw.* 405, 406.

4. But in caſes of felony it is agreed (4 *Inſt.* 164.) and is the uſual practice, after the priſoners are arraigned and have pleaded to the country, for the juſtices to iſſue a precept to the ſheriff, in nature of a *venire facias*, which may bear teſte the ſame day that the priſoners plead, commanding the ſheriff to return 24 jurors, to try the iſſue upon ſuch a day; or they may make it returnable the ſame day that the priſoner pleads, as at one of the clock in the afternoon, or the like: and this precept muſt be in the name, and under the ſeals of the juſtices, or two of them (1 Q.) and not barely by an award upon the roll. 2 *H. H.* 261, 262. How they may do the ſame in caſes of felony.

5. The writ of *venire facias* by the ſtatute of the 4 & 5 *W. c.* 24. ſhall be after this form: *The king*, &c. *We command*, &c. *that you cauſe to come before*, &c. *twelve free and lawful men of the vicinage of* A. *every of whom ſhall have* 10 *l. of land, tenements, or rents, by the year, at leaſt; by whom*, &c. *and who neither*, &c. ſ. 15. (B). Form of the venire facias.

6. The reaſon why they are required to come from the vicinage, is for that the neighbours are preſumed to know what is done in the neighbourhood. 1 *Inſt.* 158. Why the jurors ſhall be returned of the neighbourhood.

But yet this is not neceſſarily required; for they of one ſide of the county, are by law of the neighbourhood, to try an offence of the other ſide of the county. 2 *H. H.* 264.

And by the 4 *An. c.* 16. *ſ.* 6, 7. and 24 *G.* 2. *c.* 18. *ſ.* 3. to prevent challenges for default of hundredors, every *venire facias* for the trial of an iſſue in any action in the courts at *Weſtminſter*, or in any action or information on a penal ſtatute, ſhall be awarded of the body of the county where ſuch iſſue is triable.

7. And although the words of the writ be twelve, yet by the ancient courſe, the ſheriff muſt return 24, for the expedition of juſtice; for if twelve only ſhould be returned, there would ſeldom a full jury appear; and in this caſe uſage and cuſtom makes the law. 2 *H. H.* 263. *Read.* Jur. How many ſhall be returned and ſerve.

But the general precept that iſſues before a ſeſſion is to return 24, and commonly the ſheriff returns upon tha precept 48. 2 *H. H.* 263.

But in iſſues of *niſi prius*, the ſheriff ſhall, upon his return of the writ of *venire facias juratores* (unleſs in cauſes intended to be tried at bar, or where a ſpecial jury ſhall be appointed) annex a panel to the ſaid writ, containing the chriſtian and ſurname, additions, and places of abode, of a competent number of jurors, the names of the ſame perſons to be inſerted in the panel annexed to every *venire facias*, for the trial of all iſſues at the ſame aſſizes; which number of jurors ſhall be not leſs than 48 in any county, nor more than 72, unleſs the judges ſhall order otherwiſe. And the writs of *habeas corpora juratorum*, or *diſtringas*, ſubſequent to ſuch writ of *venire facias juratores*, need not have inſerted in the bodies of ſuch writs the names of all the perſons contained in ſuch panel, but it ſhall be ſufficient to inſert in the mandatory part of ſuch writs reſpectively, *the bodies of the ſeveral perſons named in the panel annexed to this writ*, or words of the like import, and to annex to ſuch writs reſpectively panels, containing the ſame names as were returned in the panel to ſuch *venire facias*, with their additions and places of abode, that the parties concerned in any ſuch trials may have timely notice of the jurors who are to ſerve at the next aſſizes, in order to make their challenges to them, if there be cauſe; and the perſons named in ſuch panels ſhall be ſummoned at the next aſſizes and no other. 3 *G.* 2. *c.* 25. *ſ.* 8. It is true, this gives them an opportunity of knowing how to make their challenges; but it alſo gives them an opportunity to another purpoſe, namely, of labouring the jurors,———a practice which cannot be too much diſcouraged.

In *Wales*; the ſheriff ſhall ſummon out of every hundred or commote, not leſs than ten, nor more than fifteen; unleſs the judges ſhall order otherwiſe. 3 *G.* 2. *c.* 25. *ſ.* 9.

And in the counties palatine; The ſheriff ſhall ſummon not leſs than 48, nor more than 72 (unleſs the judges order otherwiſe); and ſhall eight days before the courts be held, cauſe a liſt to be made of the perſons ſummoned, which ſhall be hung up in the ſheriff's

riff's office, to be inſpected by any perſon. 3 *G.* 2. *c.* 25. *ſ.* 10.

Upon the grand jury; there may be, and uſually are, more than 12: but if there be 12 aſſenting, tho' others diſſent, it is not neceſſary for the reſt to agree. 2 *H. H.* 161.

But upon a trial by a petit jury; it can be by no more nor leſs than 12, and all aſſenting to the verdict. 2 *H. H.* 161.

In the county of *York*; only one panel of 48 freeholders and copyholders, and no more, ſhall be returned to ſerve on the grand inqueſt at the aſſizes; and at the ſeſſions, not above 40, either upon the grand inqueſt, or other ſervice there. 7 & 8 *W. c.* 32. *ſ.* 8.

Time and manner of ſummons.

8. Every ſummons of jurors ſhall be made by the ſheriff, his officer, or lawful deputy, ſix days before at the leaſt (and in *Wales* eight days before, and in the counties *palatine* 14 days before, 3 *G.* 2. *c.* 25. *ſ.* 9, 10.) ſhewing to every perſon ſo ſummoned the warrant under the ſeal of the office wherein they are appointed to ſerve; and if ſuch juror be abſent from the place of his habitation, notice of the ſummons ſhall be given by leaving a note in writing, under the hand of ſuch officer, containing the contents thereof, at the dwelling houſe of ſuch juror, with ſome perſon there inhabiting in the ſame. 7 & 8 *W. c.* 32. *ſ.* 5.

Penalty on the ſheriff or bailiff neglecting.

9. If the ſheriff, his deputy, or bailiff, neglect their duty herein, or excuſe any perſon for favour or reward; he ſhall forfeit 20 l. to him who ſhall ſue. 7 & 8 *W. c.* 32. *ſ.* 6. Or, he may be fined 10 l. or under, by the judge of aſſize. 3 *G.* 2. *c.* 25. *ſ.* 6.

And no bailiff, or other officer, ſhall ſummon any perſon, other than ſuch whoſe name is ſpecified in a mandate ſigned by the ſheriff or under ſheriff, and directed to ſuch bailiff or other officer; on pain of 10 l. on a ſummary conviction before the judge of aſſize. 3 *G.* 2. *c.* 25. *ſ.* 6.

How often they ſhall be ſummoned and ſerve.

10. No perſons ſhall be returned as jurors at the aſſizes; who have ſerved within one year before in the county of *Rutland*, or two years before in any other county (not being a county of a city or town, and except the counties of *York* and of *Middleſex*); on pain that the ſheriff, on examination and proof in a ſummary way,

ſhall be fined by the judge not exceeding 5 l. 3 *G.* 2. *c.* 25. *ſ.* 4.

And the ſheriff ſhall enter in a book, the names of ſuch perſons as ſhall be ſummoned and ſhall ſerve at the aſſizes, with their additions, and places of abode alphabetically, and the times of their ſervices; and every perſon who hath ſerved, ſhall (on application by him made to the ſheriff) have a certificate *gratis*, teſtifying his attendance: and the ſaid book ſhall be tranſmitted to the ſucceeding ſheriff. 3 *G.* 2. *c.* 25. *ſ.* 5.

In the county of *York*; They ſhall not be returned above once in four years, at the aſſizes or ſeſſions. 7 & 8 *W.* *c.* 32. *ſ.* 7. 10 *An.* *c.* 14. *ſ.* 5.

And if the ſheriff of the county of *York*, neglect to keep ſuch book as above, or to enter the names, or to deliver over to his ſucceſſor the entries made for four years next before, or to deliver the certificate *gratis*; he ſhall forfeit 100 l. half to the king, and half to him that ſhall ſue. 3 & 4 *An.* *c.* 18. *ſ.* 3.

And if he ſhall ſummon or return any juror, who ſhall have ſerved within four years, and ſhall not on producing the certificate diſcharge the ſummons or return, and thereof give notice to the party ſummoned, ſix days before the aſſizes or ſeſſions; he ſhall forfeit 20 l. to the party, with full coſts. 3 & 4 *An.* *c.* 18. *ſ.* 4.

In the county of *Middleſex*: No perſon ſhall be returned to ſerve as a juror, at any ſeſſions of *niſi prius*, who hath been returned in the two terms or vacations next before: on pain of the ſheriff being fined by the judge 5 l. or under. 4 *G.* 2. *c.* 7. *ſ.* 2.

And by the 7 & 8 *W.* *c.* 32. *ſ.* 9. The inhabitants of the city and liberty of *Weſtminſter*, ſhall be exempted from ſerving in any jury at the ſeſſions for *Middleſex*, by reaſon of their attendance at the courts of *Weſtminſter hall.*

Jury of view.

11. In any actions brought in the courts at *Weſtminſter*, where it ſhall appear to the court, that it is neceſſary that the jurors ſhould have the view of the place in queſtion, they may order ſpecial writs of *diſtringas* or *habeas corpora* to iſſue, by which the ſheriff ſhall be commanded, to have ſix out of the

firſt

firſt 12 of the jurors, or ſome greater number of them, at the place in queſtion, ſome convenient time before the trial; who ſhall have the matters in queſtion ſhewn to them by two perſons in the ſaid writs named; and the ſheriff by a ſpecial return upon the ſame, ſhall certify that the view hath been had according to the command of the ſaid writ. 4 *An.* *c.* 16. *ſ.* 8.

And by the 3 *G.* 2. *c.* 25. *ſ.* 14. Where a view ſhall be allowed, ſix or more of the jurors in the panel, who ſhall be conſented to by the parties on both ſides or their agents, or if they cannot agree, by the proper officer or judges of the court,———ſhall have the view, and ſhall be firſt ſworn, or ſuch of them as appear, before any drawing, and others ſhall be drawn to make up the number.

Special jury.

12. *Tr.* 8 *W.* a rule was made, that when the maſter is to ſtrike a jury, *viz.* 48. out of the freeholders book, he ſhall give notice to the attornies of both ſides to be preſent; and if the one comes, and the other does not, he that appears ſhall according to the ancient courſe ſtrike out 12, and the maſter ſhall ſtrike out other 12 for him that is abſent. 1 *Salk.* 405.

But if by rule of court, the maſter is ordered to ſtrike a jury, in caſe it be not expreſſed in ſuch rule, that the maſter ſhall ſtrike 48, and each of the parties ſhall ſtrike out 12; the maſter is to ſtrike 24, and the parties have no liberty to ſtrike out any. 1 *Salk.* 405. *M.* 8 *W.*

And the party, who ſhall apply for a ſpecial jury to be ſtruck, ſhall pay the fees for the ſtriking ſuch jury, and ſhall not be allowed the ſame on taxation. 3 *G.* 2. *c.* 25. *ſ.* 16. And alſo ſhall pay all the expences occaſioned by the trial of the cauſe, and ſhall have no other allowance for the ſame upon taxation of coſts, than he would be intitled to, if the cauſe had been tried by a common jury; unleſs the judge ſhall in open court certify upon the back of the record, that the ſame was a cauſe proper to be tried by a ſpecial jury. 24 *G.* 2. *c.* 18. *ſ.* 1.

And no perſon who ſhall ſerve upon a ſpecial jury, ſhall be allowed more than the ſum which the judge ſhall think reaſonable, not exceeding one guinea, except in cauſes wherein a view is directed. 24 *G.* 2. *c.* 18. *ſ.* 2.

On a motion for a ſpecial jury, in the caſe of the *King* againſt *Maccartney*, *T.* 2 *G.* for the murder of the duke of *Hamliton*, it was held by *Parker* chief juſtice, that there cannot be a ſpecial jury in caſes of *treaſon or felony*; for the party muſt have the advantage of challenging 20 in caſe of felony, and 35 in caſe of high treaſon, without cauſe ſhewn. In caſes of ſpecial juries, there are 48 brought before the maſter, and he takes 24; ſo there cannot be a rule for a good jury, nor for a ſpecial jury, in this caſe of a trial at bar; for the jury will be the ſame with or without ſuch a rule, for they are all good juries in *Middleſex*, and ſo in all caſes of jurors at the bar; and if there ſhould be a ſpecial jury, it would take away the advantage the party has of challenging peremptorily, although not of ſhewing cauſe. So no rule was made in this caſe, leſt the ſheriff in all other caſes, when there is no ſuch rule, ſhould not return a good jury. *Viner.* Trial. (D. e. 2) 5.

Tales. 13. Where a full jury at *niſi prius* (or on indictments, informations, or other actions on penal ſtatutes, 4 & 5 *P.* & *M.* *c.* 7.) ſhall not appear, or ſhall be reduced below the number by challenge, the judges on requeſt of the plaintiff (or defendant, 14 *El.* *c.* 9.) may command the ſheriff to appoint ſo many other able perſons of the county then preſent at the aſſizes, as ſhall make up a full jury; whoſe names ſhall be annexed to the panel. 35 *H.* 8. *c.* 6. *ſ.* 6.

And by the 4 & 5 *W.* *c.* 24. *ſ.* 18, 19. theſe tales-men, (*tales de circumſtantibus*) ſhall have each 5 l. a year, of like eſtate as other jurors; in Wales 3 l.

But by the 7 & 8 *W.* *c.* 32. *ſ.* 3. Tales-men in *niſi prius* ſhall be returned out of the other panels, returned to ſerve at the ſame aſſizes.

And the parties may have their challenges to the tales, as to other jurors. 35 *H.* 8. *c.* 6. *ſ.* 7.

And if ſuch tales-men, after they be called, be preſent, and do not appear, or after appearance do wilfully withdraw themſelves, the judges may fine them; which ſhall be levied as iſſues forfeited by jurors, for default of their appearance at common law, have been accuſtomed to be levied. 35 *H.* 8. *c.* 6. *ſ.* 9.

By the 4 & 5 *W.* *c.* 24. *ſ.* 20. No fee ſhall be taken by any ſheriff, clerk of aſſize, or any other perſon, for the return of any tales, or upon the account of any tales returned

returned; on pain of 10 l. half to the profecutor, and half to the king.

Addition to be returned.

14. No ſheriff ſhall return any juror, without the addition of his dwelling, or ſome other addition by which he may be known; and no extract of iſſues ſhall be delivered out, without ſuch addition; on pain of five marks to the king, and five marks to the party grieved; to be recovered in ſeſſions, or elſewhere. 27 *El. c.* 7.

Jurors not appearing.

15. By the common law, jurors returned, and not appearing, ſhall loſe and forfeit the iſſues returned upon them. 35 *H.* 8. *c.* 6.

And if a juryman be cal'ed, and (being preſent) refuſe to appear; or, having appeared, withdraw himſelf before he be ſworn, the court may ſet a fine upon him at their diſcretion. 2 *H. H.* 309. 35 *H.* 8. *c.* 6. *ſ.* 9.

And by the 29 *G.* 2. *c.* 19. a juror not appearing and ſerving in any court of record within the city of *London*, or in any other city or town corporate, liberty, or franchiſe, after being openly called three times, and oath made of his having been ſummoned, ſhall (without reaſonable excuſe on oath or affidavit to the ſatisfaction of the court) be fined not more than 40 s. nor leſs than 20 s. and on refuſal to pay to ſuch perſon whom the judge or judges ſhall appoint to receive the ſame, they ſhall levy the ſame by warrant of diſtreſs, rendring the overplus, the reaſonable charges of diſtreſs and ſale being firſt deducted; the ſame to be paid to the proper officer of the place, to be applied to ſuch uſes as iſſues ſet on jurors or other fines ſet in ſuch courts are by charter, uſage, or preſcription applicable.

Penalty of recording perſons who did not appear.

16. If the clerk of aſſize, or other officer, ſhall record the appearance of any perſon who did not appear; he ſhall, on conviction before the judge of aſſize in a ſummary way, forfeit not exceeding 10 l. nor under 40 s. 3 *G.* 2. *c.* 25. *ſ.* 3.

Drawing jurors names for trial.

17. Laſt of all; The name of each perſon ſummoned to try the iſſues of *niſi prius*, with his addition and place of abode, ſhall be written in ſeveral and diſtinct pieces of parchment or paper, as near as may be of equal ſize, and delivered to the marſhal by the under ſheriff. And the ſame ſhall by the marſhal be rolled up, all, as near as may be, in the ſame manner,

ner, and put together in a box or glaſs to be provided for that purpoſe. And when any cauſe ſhall be brought on to be tried, ſome indifferent perſon by direction of the court, ſhall in open court draw out 12 of the ſaid parchments or papers one after another. And if any of the perſons, whoſe names ſhall be ſo drawn, ſhall not appear, or be challenged and ſet aſide; then ſuch further number, until 12 be drawn who ſhall appear, and after all cauſes of challenge, ſhall be allowed as fair and indifferent. And the ſaid 12 perſons ſo firſt drawn and appearing, and approved as indifferent, their names being marked in the panel, and they being ſworn, ſhall be the jury to try the cauſe. And the names of the perſons ſo drawn and ſworn, ſhall be kept apart by themſelves in ſome other box or glaſs to be kept for that purpoſe, till ſuch jury ſhall have given in their verdict, and the ſame is recorded, or until ſuch jury ſhall by conſent of the parties, or leave of the court, be diſcharged. And then the ſame names ſhall be rolled up again, and returned to the former box or glaſs, there to be kept with the other names remaining at that time undrawn. And ſo *toties quoties*, as long as any cauſe remains then to be tried. Provided, that if any cauſe ſhall be brought on to be tried, before the jury in any other cauſe ſhall have brought in their verdict, or be diſcharged; the court may order 12 of the reſidue of the ſaid parchments or papers, to be drawn as aforeſaid. 3 G. 2. c. 25. ſ. 11. 12.

IV. Of the challenge of jurors.

And herein,

i. Of the ſeveral kinds of challenge.
ii. When the challenge is to be taken.
iii. How the challenge ſhall be tried.
iv. How panels may be reformed by the court, without challenge.

i. Of

i. Of the ſeveral kinds of challenge.

There are two kinds of challenge; either to the *array*, by which is meant the whole jury as it ſtands *arrayed* in the *panel*, or little ſquare *pane* of parchment on which the jurors names are written: or to the *polls*, by which are meant the ſeveral particular perſons or *heads* in the array. 1 *Inſt.* 156, 158. Two kinds of challenge.

1. Challenge to the *array*, is in reſpect of the partiality or default of the ſheriff, coroner, or other officer that made the return: and this is two-fold; To the array;

(1) Principal challenge to the array: which if it is made good, is a ſufficient cauſe of exception, without leaving any thing to the judgment of the triers. Principal challenge to the array.

Cauſes of challenge of this ſort, are ſuch as theſe: If the ſheriff, or other officer, be of kindred or affinity to the plaintiff or defendant, if the affinity continue. If any one or more of the jury be returned at the denomination of the party plaintiff or defendant, the whole array ſhall be quaſhed. If the plaintiff or defendant have an action of battery againſt the ſheriff, or the ſheriff againſt either party, this is a good cauſe of challenge. So if the plaintiff or defendant have an action of debt againſt the ſheriff; but otherwiſe it is, if the ſheriff have an action of debt againſt either party. Or if the ſheriff have parcel of the land depending upon the ſame title. Or if the ſheriff, or his bailiff which returned the jury, be under the diſtreſs of either party. Or if the ſheriff, or his bailiff, be either of counſel, attorney, officer, or ſervant of either party; goſſip; or arbitrator in the ſame matter, and treated thereof. 1 *Inſt.* 156.

And formerly, if a peer was plaintiff or defendant, and a knight was not returned of the jury, the array might have been quaſhed: but now by the 24 *G.* 2. *c.* 18. *ſ.* 4. No challenge ſhall be taken to any panel of jurors, for want of a knight's being returned of the panel, where a peer is party.

And the ſubject may challenge the array againſt the king; as in traverſe of an office, he that traverſeth may challenge the array: And ſo it is in caſe of life. 1 *Inſt.* 156.

And where a ſubject may challenge the array, for unindifferency, there the king being a party may alſo challenge for the ſame cauſe. 1 *Inſt.* 156.

The

The array challenged on both ſides ſhall be quaſhed. 1 *Inſt.* 156.

Challenge to the array for favour.

(2) Challenge to the array, for favour. He that taketh this muſt ſhew in certain the name of him that made it, and in whoſe time, and all in certainty. This kind of challenge, being no principal challenge, muſt be left to the diſcretion and conſcience of the triers. As if the plaintiff or defendant be tenant to the ſheriff, this is no principal challenge, but he may challenge for favour, and leave it to trial. So affinity between the ſon of the ſheriff, and the daughter of the party, or the like, is no principal challenge, but to the favour; but if the ſheriff marry the daughter of either party, or the like, this (as hath been ſaid) is a principal challenge. 1 *Inſt.* 156.

But where the king is party, one ſhall not challenge the array for favour; becauſe in reſpect of his allegiance, he ought to favour the king more: but if the ſheriff be a menial ſervant of the king, there the challenge is good. 1 *Inſt.* 156. By which ſeems to be meant, that ſuch challenge is not good, without ſhewing ſome actual partiality in the ſheriff. 2 *Haw.* 419.

But the king may challenge the array for favour. 1 *Inſt.* 156.

To the polls;

2. Challenge to the polls is threefold.

Peremptory challenge to the polls.

(1) Peremptory. This is ſo called, becauſe a perſon may challenge peremptorily, upon his own diſlike, without ſhewing of any cauſe.

This peremptory challenge ſhall not be allowed to the king; for it is provided by the 33 *Ed.* 1. *ſt.* 4. that he who challenges a juror for the king, ſhall ſhew cauſe, and the truth thereof ſhall be inquired of. And this extends as well to criminal, as civil cauſes. However, if the king challenge a juror, he need not ſhew any cauſe of his challenge, till the whole panel be gone through, and it appear that there will not be a full jury without the perſon challenged. And if the defendant, in order to oblige the king to ſhew cauſe, preſently challenge all the reſt, yet it hath been adjudged, that the defendant ſhall be firſt put to ſhew all his cauſes of challenge, before the king need to ſhew any. 2 *Haw.* 413.

And this peremptory challenge is not allowable to the party againſt the king, but only in caſe of treaſon or felony, in favour of life. 1 *Inſt.* 156.

But

But in caſe of treaſon or felony, the priſoner by the common law might peremptorily challenge 35, which was under the number of three juries; but by the ſtatute of the 22 *H.* 8. *c.* 14. *ſ.* 6. the number is reduced to 20, in petit treaſon, murder and felony; and in caſe of high treaſon, and miſpriſion of high treaſon, it was taken away by the ſtatute of the 33 *H.* 8. *c.* 23. but by the ſtatute of the 1 & 2 *P.* & *M. c.* 10. the common law was again revived for *any* treaſon, and therein the priſoner ſhall have his peremptory challenge to the number of 35. 1 *Inſt.* 156.

But as to all murders and other felonies, the ſtatute of the 22 *H.* 8. *c.* 14. taking away the peremptory challenge of above 20 ſtands in force. 2 *H. H.* 269. But if the party challenge above that number, he ſhall not have judgment of death, but his challenge ſhall be overruled, and he ſhall be put upon his trial. *H. Pl.* 259. 2 *H. H.* 270.

Note; the above ſtatute of the 1 & 2 *P.* & *M. c.* 10. by miſtake hath been omitted out of Mr. *Hawkins*'s edition of the ſtatutes.

(2) Principal challenge to the polls: where cauſe is ſhewn, but which if found true, ſtands ſufficient of itſelf, without leaving any thing to the triers. Principal challenge to the polls.

Cauſes of principal challenge to the polls, are ſuch as theſe:

A peer is not to be ſworn on juries, and he may be challenged by either party, or may bring a writ of privilege for his diſcharge. 1 *Inſt.* 156. 2 *Haw.* 415.

Want of freehold, is a good cauſe of challenge. 1 *Inſt.* 156.

Alſo, if a perſon is an alien. 1 *Inſt.* 156.

If the juror be within the age of 21, it is a good cauſe of challenge. 1 *Inſt.* 157.

If a juror is above the age of 70, or is ſick, or is non reſident in the county, he may ſue out a writ of privilege for his diſcharge; but if he be returned and appear, he can neither be challenged by the party, nor excuſe himſelf from not ſerving, if there be not enow without him. 2 *Haw.* 418.

If the juror be of blood or kindred to either party, this is a principal challenge; for that the law preſumeth that one kinſman doth favour another, before a ſtranger; and how far remote ſoever he is of kindred, yet the challenge is good. 1 *Inſt.* 157.

Affinity

Affinity, or alliance by marriage, is a principal challenge, if the ſame continues, or iſſue be had; otherwiſe, it is but to the favour. 1 *Inſt.* 157.

If the juror be godfather to the child of the plaintiff or defendant, or they to his child, this is allowed to be a good challenge in our books. 1 *Inſt.* 157.

If the juror hath part of the land that dependeth upon the ſame title, it is a principal challenge. 1 *Inſt.* 157.

It hath been allowed a good cauſe of challenge, on the part of the priſoner, that the juror hath declared his opinion beforehand, that the party is guilty, or will be hanged, or the like. 2 *Haw.* 418.

Likewiſe if the juror gave a verdict before, for the ſame cauſe, or upon the ſame title or matter, though between other perſons. 1 *Inſt.* 157.

So likewiſe one may be challenged, that he was indictor of the plaintiff or defendant in the ſame cauſe; for ſuch a one, it may be thought, will not falſify his former oath. *Lamb.* 554. And if a grand juryman who was one of the indictors in the ſame cauſe, be returned upon the petit jury, and do not challenge himſelf, he ſhall be fined. 2 *H. H.* 309.

If a juror hath been an arbitrator, choſen by the plaintiff or defendant in the ſame cauſe; and hath been informed thereof, or treated of the matter, this is a principal challenge; otherwiſe, if he were choſen indifferently by either of the parties. 1 *Inſt.* 157.

If he be of counſel, ſervant or of fee, of either party, it is a principal challenge. 1 *Inſt.* 157.

Alſo, if a juryman, before he be ſworn, take information of the caſe, this is cauſe of challenge. 2 *H. H.* 306.

If any after he be returned, do eat and drink at the charge of either party, it is a principal cauſe of challenge. 1 *Inſt.* 157.

But it is not a principal challenge to a juror, but only to the favour, that the proſecutor was lately entertained at his houſe. 3 *Salk.* 81.

Actions brought either by the juror againſt either of the parties, or by either of the parties againſt him, which imply malice or diſpleaſere, are cauſes of principal challenge; other actions, which do not imply malice or diſpleaſure, are but to the favour. 1 *Inſt.* 157.

In a cauſe where the parſon of a pariſh is party, and the right of the church cometh in debate, a pariſhioner is a principal challenge. 1 *Inſt.* 157.

If either party labour the juror, and give him any thing to give his verdict, this is a principal challenge; but if either party labour the juror to appear, and to do his conſcience, this is no challenge at all, but lawful for him to do it. 1 *Inſt.* 157.

That the juror is a fellow ſervant with either party, is no principal challenge, but to the favour. 1 *Inſt.* 157.

If the juror be attainted or convicted of treaſon or felony, or for any offence to life or member, or in attaint for a falſe verdict, or for perjury as a witneſs, or in a conſpiracy at the ſuit of the king, or in any ſuit (either for the king or for any ſubject) be adjudged to the pillory, tumbrel, or the like, or to be branded or ſtigmatized, or to have any other corporal puniſhment, whereby he becometh infamous; theſe, and the like, are principal cauſes of challenge. 1 *Inſt.* 158.

So it is, if a man be outlawed in treſpaſs, debt, or any other action, for he is *exlex*, and therefore not a lawful man. 1 *Inſt.* 158.

And old books have ſaid, that if he be excommunicated, he could not be of a jury. 1 *Inſt.* 158.

3. Challenge to the polls for favour. This is, when either party cannot take any principal challenge, but ſheweth cauſes of favour, which muſt be left to the conſcience and diſcretion of the triers, upon hearing their evidence to find him favourable, or not favourable. And the cauſes of favour are infinite. For all which, the rule of law is, that he muſt ſtand indifferent, as he ſtands unſworn. 1 *Inſt.* 157. Challenge to the polls for favour.

ii. When the challenge is to be taken.

1. No challenge can be taken either to the array, or to the polls, till a full jury have appeared. 2 *Haw.* 412.

2. He that hath divers challenges muſt take them all at once. 1 *Inſt.* 158.

3. If a juror be challenged by one party, and after, be tried indifferent, it is time enough for the other party to challenge him. 1 *Inſt.* 158.

4. After

4. After challenge to the array, and trial duly returned, if the ſame party take a challenge to the polls, he muſt ſhew cauſe preſently. 1 *Inſt.* 158.

5. If a juror be formerly ſworn, if he be challenged, the party muſt ſhew cauſe preſently, and that cauſe muſt riſe ſince he was ſworn. 1 *Inſt.* 158.

6. When the king is party, the defendant that challengeth for cauſe muſt ſhew his cauſe preſently. 1 *Inſt.* 158.

7. But if a juror be challenged between party and party, and there be enough of the panel beſides; the cauſe of challenge needeth not to be ſhewed, unleſs the other ſide challenges *touts peravail.* Tr. p. pais 143.

8. If a man, in caſe of treaſon or felony, challenge for cauſe, and he be tried indifferent, yet he may challenge him peremptorily. 1 *Inſt.* 158.

9. The priſoner muſt take all peremptory challenges himſelf, even in caſes wherein he may have counſel. 2 *Haw.* 413.

10. The challenge to the array, muſt be in writing (C); but where the challenge is to the polls, it is a ſhort way by a verbal challenge. *Tr. p. pais* 172.

iii. How the challenges ſhall be tried.

1. The challenge of him who firſt challenged ſhall be firſt tried. *Tri. p. pais* 144.

2. If the array be challenged, it lies in the diſcretion of the court how it ſhall be tried; ſometimes it is done by two coroners, and ſometimes by two of the jury, with this difference, that if the challenge be for kindred in the ſheriff, it is moſt fit to be tried by two of the jurors returned; if the challenge found in favour of partiality, then by any other two aſſigned thereunto by the court. 2 *H. H.* 275.

3. When any challenge is made to the polls, if it be before any jurors are ſworn, the court ſhall chuſe the triers; if two are ſworn, they ſhall try; and if they try one indifferent, and he be ſworn, then he and the two triers ſhall try another; and if another be tried indifferent; and he be ſworn, then the two triers ceaſe, and the two that be ſworn on the jury ſhall try the reſt: If the plaintiff challenge ten, and the defendant one, and the twelfth is ſworn, becauſe one cannot try alone, there ſhall be added to him one challenged by the plaintiff,

tiff, and another by the denfendant. *Finch* 112. 1 *Inſt.* 158.

4. The triers oath is, "You ſhall well and truly try, "whether *A. B.* (the juryman challenged) ſtand indif- "ferent between the parties to this iſſue: ſo help you "god." 1 *Salk.* 152.

5. If the cauſe of challenge touch the diſhonour or diſcredit of the juror, he ſhall not be examined on his oath; but in other caſes, he ſhall be examined on his oath, to inform the triers. 1 *Inſt.* 158. 1 *Salk.* 153.

6. If the array be quaſhed againſt the ſheriff, the proceſs of *venire facias juratores* ſhall be directed to the coroners; if againſt any of the coroners, then proceſs ſhall be awarded to the reſt; if againſt all of them, then the court ſhall appoint certain eliſors (ſo named *ab eligendo*), againſt whoſe return no challenge ſhall be taken to the array, becauſe they were appointed by the court; but he may have his challenge to the polls. 1 *Inſt.* 158.

iv. How panels may be reformed by the court without challenge.

Beſides the challenges which may be taken by the plaintiff or defendant, it is enacted by the 3 *H.* 8. *c.* 12. that in caſes where the king is party, the juſtices of aſſize, or of the peace in ſeſſions, may reform the panels of jurors, by putting to and taking out of the names of the perſons impanelled by their diſcretion; and if the ſheriff do not return the panel ſo reformed, he ſhall forfeit 20 l. half to the king, and half to him that ſhall ſue.

And this extends both to grand and petit juries. 2 *H. H.* 156.

And hence it is, that if a priſoner be arraigned before the judge that ſits upon the crown ſide, it is uſual for the judge to ſend for a jury to the judge of *niſi prius*, and when the jury is brought, the ſheriff returns them between the king and the priſoner; which is by virtue of this ſtatute. 2 *H. H.* 265.

V. Of the demeanor of jurors in giving their verdict.

Jurors to be kept without meat or drink.

1. By the law of *England*, a jury after their evidence given upon the iſſue, ought to be kept together in ſom convenient place, without meat or drink, fire or candle, and without ſpeech with any, unleſs it be the bailiff, and with him only if they be agreed. 1 *Inſt.* 227.

Bailiff ſworn to keep them.

2. And the bailiff ought to be ſworn to keep them together, and not to ſuffer any to ſpeak with them. 2 *H. H.* 296.

Whether eating and drinking ſhall avoid the verdict.

3. And if the jury after their evidence given to them at the bar, do at their own charges eat or drink, either before or after they be agreed on their verdict; it is fineable, but it ſhall not avoid the verdict; but if before they be agreed on their Verdict, they eat or drink at the charge of the plaintiff, if the verdict be given for him, it ſhall avoid the verdict; but if it be given for the defendant it ſhall not avoid it, and ſo on the contrary. But if after they be agreed on their verdict, they eat or drink at the charge of him for whom they do paſs, it ſhall not avoid the verdict. 1 *Inſt.* 227.

In what caſes they may eat or drink.

4. But with the aſſent of the juſtices they may both eat and drink; as if any of the jurors fall ſick before they be agreed of their verdict, then by the aſſent of the juſtices he may have meat or drink, and alſo ſuch other things as be neceſſary for him and his fellows alſo, at their own coſts, or at the indifferent coſts of the parties, if they ſo agree: and if they cannot agree, the juſtices may in ſuch caſe ſuffer the jury to have both meat and drink for a time, to ſee whether they will agree. *Dr. & St.* 158.

May re-examine witneſſes.

5. After their departure they may deſire to hear one of the witneſſes again, and it ſhall be granted ſo he deliver his teſtimony in open court; and alſo they may deſire to propound queſtions to the court for their ſatisfaction, and it ſhall be granted, ſo it be in open court. 2 *H. H.* 296.

May hear no evidences but in court.

6. But if the plaintiff after evidence given, and the jury departed from the bar, or any for him, do deliver any letter from the plaintiff to any of the jury concerning the matter in iſſue, or any evidence, or any writing touching the matter in iſſue, which was not given in evidence, it ſhall avoid the verdict, if it be found for the plaintiff,

tiff, but not if it be found for the defendant, and ſo on the contrary. But if the jury carry away any writing unſealed, which was given in evidence in open court, this ſhall not avoid their verdict, albeit they ſhould not have carried it with them. 1 *Inſt.* 227.

7. A jury ſworn and charged in a capital caſe, cannot be diſcharged (without the priſoner's conſent) till they have given a verdict. 2 *Hawk.* 439. *Foſt.* 22. Sir *John Wedderbourn*'s caſe. Cannot be diſcharged without giving a verdict.

And the king cannot be nonſuit, for he is in judgment of law ever preſent in court. 1 *Inſt.* 227.

8. If a jury ſay they are agreed, and it being aſked who ſhall ſay for them, they ſay their foreman, but upon further enquiry they are not agreed, they may be fined. 2 *H. H.* 309. May be fined for ſaying they are agreed, when they are not.

9. If a jury caſt lots for their verdict, it ſhall be ſet aſide, and they ſhall be fined for the contempt. 3 *Keb.* 805. 2 *Lev.* 140, 205. 2 *Jones* 83. Caſting lots for their verdict.

M. 12 *G. Hale* and *Cove.* The jury having ſat up all night agreed in the morning to put two papers into a hat, marked *Plaintiff* and *Defendant*, and ſo draw lots; *Plaintiff* came out, and they found for the plaintiff, which happened to be according to the evidence, and the opinion of the judge. Upon motion for a new trial, it was agreed that the verdict muſt be ſet aſide; but the queſtion was, whether the defendant ſhould pay coſts; the court inclined to give the plaintiff coſts, comparing it to the caſe of a verdict againſt evidence; but at laſt it was agreed, that the coſts ſhould wait the event of the new trial. *Str.* 642.

10. The jury may give a verdict without teſtimony, when they themſelves have conuſance of the fact. *Tr. p. pais* 279. 1 *Vent.* 97. Giving verdict without evidence.

11. But if they give a verdict on their own knowledge, they ought to tell the court ſo; but they may be ſworn as witneſſes; and the fair way is to tell the court before they are ſworn that they have evidence to give. 1 *Salk.* 405. Juror may be a witneſs.

For certainly it is of dangerous conſequence, to receive a verdict againſt evidence given, on ſuppoſal that ſome of the jury knew otherwiſe, or on private information given by any juryman to the reſt, where he cannot be croſs examined. *Tr. p. pais* 209.

12. After they be agreed, they may in cauſes between party and party, if the court be riſen, give a private verdict, Private verdict.

dict, before auy of the judges of the court; and then they may eat and drink; and the next morning in open court they may either affirm or alter their private verdict; and that which is given in court ſhall ſtand. 1 *Inſt.* 227.

But in criminal caſes of life or member, the jury can give no private verdict, but they muſt give it openly in court. 1 *Inſt.* 227.

Special verdict.

13. In all cauſes, and in all actions, the jury may give either a general or a ſpecial verdict, as well in cauſes criminal as civil; and the court ought to receive a ſpecial verdict, if pertinent to the point in iſſue. 3 *Salk.* 373.

Thus if one be indicted for grand larceny, that is, for ſtealing goods above the value of 12 d. yet the jury may find ſpecially, that he is guilty, but that the goods are not above the value of 12 d. In which caſe he ſhall only have judgment of petty larceny. 1 *Haw.* 95.

Jurors to try not the law, but the fact.

14. Jurors are to try the fact, and the judges ought to judge according to the law that ariſeth upon the fact. 1 *Inſt.* 226.

But if they will take upon them the knowledge of the law upon the matter, they may; yet it is dangerous, for if they miſtake the law, they run into the danger of an attaint; therefore to find the ſpecial matter is the ſafeſt way, where the caſe is doubtful. 1 *Inſt.* 228.

But if the jury find according to the direction of the judge in matter of law, although the judge be miſtaken, yet the jury ſhall not be liable to attaint. L. *Raym.* 470.

Finding againſt evidence.

15. It hath been adjudged, that if the jury acquit a priſoner of an indictment of felony againſt manifeſt evidence, the court may, before the verdict is recorded, but not after, order them to go out again, and reconſider the matter; but this by many is thought hard, and ſeems not of late years to have been ſo frequently practiſed as formerly. However it is ſettled, that the court cannot ſet aſide a verdict which acquits a defendant, of a proſecution properly criminal, as it ſeems that they may a verdict that convicts him, for having been given contrary to evidence and the directions of the judge, or any verdict whatſoever for a miſtrial. 2 *Hawk.* 442.

16. After

16. After the verdict recorded, the jury cannot vary from it; but before it be recorded, they may vary from the firſt offer of their verdict, and that verdict which is recorded ſhall ſtand. 1 *Inſt.* 227. Varying from the verdict.

17. A verdict finding an impoſſible matter ſhall not be void, if at the ſame time it find the ſubſtance of the indictment; but the ſurplus ſhall be rejected. 1 *Hawk.* 77. Verdict finding an impoſſibility.

18. Verdict ſhall not be taken ſo ſtrictly as pleadings; but the ſubſtance of the thing in iſſue ought to be always found. 3 *Salk.* 373. Verdict how far to be taken ſtrictly.

19. It is ſaid, that if the jurors agree not, before the departure of the juſtices of gaol delivery into another county, the ſheriff muſt ſend them along in carts, and the judge may take and record their verdict in a foreign county. 2 *H. H.* 297. *Tr. p. pais* 274, 285. 1 *Vent.* 97. Where they cannot agree.

But if the caſe ſo happen, that the jury can in no wiſe agree, as if one of the jurors knoweth in his own conſcience the thing to be falſe, which the other jurors affirm to be true, and ſo he will not agree with them in giving a falſe verdict, and this appeareth to the juſtices by examination; the juſtices (as it ſeemeth) in ſuch caſe may take ſuch order in the matter, as ſhall ſeem to them by their diſcretion to ſtand with reaſon and conſcience, by awarding a new inqueſt, or otherwiſe, as they ſhall think beſt by their diſcretion, like as they may do, if one of the jury die before the verdict. *Dr. & Stud.* 158.

VI. Of the indemnity and puniſhment of jurors.

1. If a man aſſault or threaten a juror, for giving a verdict againſt him, he is highly puniſhable by fine and impriſonment; and if he ſtrike him in the court, in the preſence of the judge of aſſize, he ſhall loſe his hand, and his goods, and profits of his lands during life, and ſuffer perpetual impriſonment. 1 *Hawk.* 57, 58. Threatning a juror.

2. Where more than one of the perſons returned on a jury do appear, but not a ſufficient number to take an inqueſt, and ſome of the others come within view of the court, or into the ſame town in which the court is holden, but refuſe to come into the court to be ſworn; Juror not appearing.

upon proof of ſuch matter, the court may at the prayer of the party, order the jurors who appeared, to inquire what is the yearly value of ſuch defaulters lands, and after ſuch inquiry made, either ſummon them to appear, on pain of forfeiting ſuch ſum as their lands have been found to be worth by the year, or ſome leſſer ſum, or impoſe a fine of the like ſum upon them, without any further proceeding. But it ſeems, that ſuch juror ſhall be liable to loſe his iſſues only for ſuch default, and not the yearly value of his lands, unleſs the party pray it: But a juror who hath actually appeared, and after makes default, is ſaid to be ſubject to ſuch forfeiture of the yearly value of his lands, whether the party pray it or not; becauſe his contempt appears to the court by its own record; yet even in this caſe, the court in diſcretion will ſometimes only impoſe a ſmall fine. Alſo it ſeems, that a juror who makes default without ever coming into the town wherein the court is holden, is liable only to loſe his iſſues, or to be amerced, but not to be fined. 2 *Haw.* 146.

And by the 3 *G.* 2. *c.* 25. *ſ.* 13. in cauſes of *niſi prius*, every perſon whoſe name ſhall be drawn, and who ſhall not appear, after being openly called three times, ſhall on oath made of his having been lawfully ſummoned, forfeit not exceeding 5 l. nor leſs than 40 s. unleſs ſome reaſonable cauſe of abſence be proved, by oath or affidavit, to the ſatisfaction of the judge.

Whether a grand jury may be fined for not finding a bill.

3. If the grand jury at the aſſizes or ſeſſions will not find a bill, the court may impanel another inqueſt (by the 3 *H.* 7. *c.* 1.) to inquire of their concealments and thereupon ſet fines upon them; but it ſeemeth that fines ſet upon grand inqueſts in any other manner, are not warrantable by law; for the privilege of an *Engliſhman* is, that his life ſhall not be drawn in danger without due preſentment or indictment, and this would be but a ſlender ſcreen or ſafeguard, if every juſtice of the peace, or judge of aſſize, may make the grand jury preſent what he pleaſes, or otherwiſe fine them. 2 *H. H.* 160, 1.

Juror taking a bribe.

4. If any juror do take of either party to give his verdict, he ſhall on conviction by bill or plaint, before the court where the verdict ſhall paſs, forfeit ten times as much as he hath taken, half to the king and half to him that ſhall ſue. 5 *Ed.* 3. *c.* 10. 34 *Ed.* 3. *c.* 8. 38 *Ed.* 3. *ſt.* 1. *c.* 12.

5. It

5. It ſeems to be certain, that no one is liable to any proſecution whatſoever, in reſpect of any verdict given by him in a *criminal* matter, either upon a grand or petit jury, for ſince the ſafety of the innocent, and puniſhment of the guilty doth ſo much depend upon the fair and upright proceedings of jurors, it is of the utmoſt conſequence, that they ſhould be as little as poſſible under the influence of any paſſion whatſoever. And therefore, leſt they ſhould be biaſſed with the fear of being harraſſed by a vexatious ſuit, for acting according to their conſciences, the law will not leave any poſſibility for a proſecution of this kind. And as to the objection, that an attaint lies againſt a jury for a falſe verdict in a civil cauſe, and that there is as much reaſon to allow of it in a criminal one; it may be anſwered, that in an attaint in a civil cauſe, a man's property is only brought into queſtion a ſecond time, and not his liberty or life. 1 *Haw.* 191. L. *Raym.* 469.

Whether a juror may be proſecuted for a verdict in a criminal matter.

6. But where the jurors give a falſe verdict upon an iſſue joined in any court of record, and judgment thereupon, the party grieved may bring his writ of attaint in the king's bench or common pleas, upon which 24 of the beſt men of the county are to be jurors, who are to hear the ſame evidence which was given to the petty jury, and as much as can be brought in affirmance of the verdict, but no other againſt it. And if theſe 24 who are called the grand jury, find it a falſe verdict, then followeth this terrible judgment at the common law upon the petit jury; that the party ſhall be infamous, ſo as never to be received to be a witneſs, or a juror; ſhall forfeit his goods and chattels; and his lands and tenements ſhall be taken into the king's hands; his wife and children caſt out of doors; his houſes proſtrated; his trees rooted up; his meadows ploughed up; and his body impriſoned. And ſeeing all trials of real, perſonal, and mixt actions depend upon the oath of 12 men, prudent antiquity inflicted a ſtrange and ſevere puniſhment upon them, if they were attainted of perjury. 1 *Inſt.* 294. *Read.* Jur.

Attaint in a civil cauſe.

But now by the ſtatute of 23 *H.* 8. *c.* 3. The ſeverity of this puniſhment is moderated, if the writ of attaint be grounded upon that ſtatute; but nevertheleſs, the party grieved may at his election, either bring his writ of attaint upon that ſtatute, or at the common law. *Tr. p. pais* 222.

But this proceeding ſeems to be intirely diſuſed at this day; and in the place of attaint, motions are now uſually made for new trials, when a verdict is againſt evidence. *Wood. b.* 4. *c.* 4. *Read.* Jur.

But there can be no new trial for or againſt the king. *Tr. p. pais* 210.

Whether they may be fined for their verdict.

7. It ſeems to be the current opinion of the old books, that jurors are not ſubject to any proſecution for a falſe verdict except by way of attaint: And there ſeem to be very few antient precedents for the puniſhment either of a grand or petit jury, merely for giving a verdict againſt evidence, or the direction of the court, either in a capital or civil matter. 2 *Haw.* 147.

And the fining and impriſoning of jurors for giving their verdict, hath ſeveral times been declared in parliament an illegal and arbitrary innovation, and of dangerous conſequence to the government, and the lives and liberties of the ſubject. 2 *Keb.* 180. *Read.* Jur.

And in *Buſhel*'s caſe, it was reſolved by all the judges, upon a full conference together, that a jury is not finable for going againſt their evidence, where an attaint lies. And where an attaint doth not lie, L. *Vaughan* ſays thus; "That the court could not fine a juryman at the com-"mon law, where attaint did not lie, I think to be the "cleareſt poſition that ever I conſidered, either for au-"thority or reaſon of law." And one reaſon for this is, becauſe the judge cannot fully know upon what evidence the jury give their verdict; for they may have other evidence, than what is ſhewn in court; they are of the vicinage, the judge is a ſtranger; they may have evidence from their own perſonal knowledge that the witneſſes ſpeak falſe, which the judge knows not of; they may know the witneſſes to be ſtigmatized and infamous, which may be unknown to the parties or court. And if the jury knew no more than what they heard in court, and ſo the judge knew as much as they, yet they might make different concluſions, as oftentimes two judges do; and therefore as it would be a ſtrange and abſurd thing, to puniſh one judge for differing with another in opinion or judgment, ſo it would be worſe for the jury, who are judges of the fact, to be puniſhed for finding againſt the direction of him who is not judge of the fact. *Tr. p. pais* 225. L. *Vaugh.* 135.

And to ſay the truth, ſays Lord *Hale*, it would be the moſt unhappy caſe that could be to the judge, if he at his peril

peril muſt take upon him the guilt or innocence of the priſoner: and if the judge's opinion muſt rule the matter of fact, the trial by jury would be uſeleſs. 2 *H. H.* 315.

But what if a jury gave a verdict againſt all reaſon, convicting or acquitting a perſon indicted of felony, what ſhall be done? If the jury *convict* a man, againſt or without evidence, and againſt the direction of the court, the court may reprieve him before judgment, and acquaint the king, and certify for his pardon: if the jury *acquit* him in like manner, the court may ſend them back again (and ſo in the former caſe) to conſider better of it, before they record the verdict; but if they are peremptory in it, and ſtand to their verdict, the court muſt take their verdict and record it. 2 *H. H.* 309, 310.

A. Warrant for the returning liſts of jurors.

Weſtmorland. { To *Henry Holme*, gentleman, high conſtable of the Weſt Ward, within the county aforeſaid.

AT *the general quarter ſeſſions of the peace of our ſovereign lord the king, holden at* ——— *in and for the ſaid county, the* ——— *day of* July, *in the* ——— *year of the reign of our ſaid ſovereign lord* George *the third, of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth, before us* ——— *eſquires, and others our aſſociates, juſtices of our ſaid lord the king, aſſigned to keep the peace of our ſaid lord the king in the county aforeſaid, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed:*

Theſe are to require you, upon ſight hereof, to iſſue forth your precepts to all the petty conſtables within your ſaid ward, thereby directing and requiring them, to make and return true liſts of jurors, according to the form or to the effect here following; that is to ſay,

Weſtmorland, Weſt ward. { To the conſtable of ———

BY *virtue of a warrant from his majeſty's juſtices of the peace in and for the ſaid county, at their general quarter ſeſſions aſſembled, unto me directed, you are hereby required to make a true liſt in writing, containing the names and places of*

of abode, together with the titles and additions, of all perſons, between the ages of 21 *and* 70, *dwelling within your conſtablewick, qualified to ſerve upon juries; that is to ſay, of every ſuch perſon who hath in his own name, or in truſt for him, within the county aforeſaid,* 10 *l. a year above reprizes, of freehold or copyhold lands or tenements, or of lands and tenements of antient demeſne, or in rents, or in all or any of them, in fee ſimple, fee tail, or for the life of himſelf, or ſome other perſon; or having land in poſſeſſion in his own right of* 20 *l. a year above the reſerved rent, being held by leaſe for* 500 *years or more, or for* 99 *years, or any other term determinable on one or more lives: in order to the making of which liſt, you may, if you think it needful, apply to any pariſh officer, who ſhall have in his cuſtody any of the rates for the poor or land tax, and from thence take the names of ſuch perſons ſo qualified. Which liſt ſo being made as aforeſaid, you are required, upon two or more* ſundays, *at leaſt* 20 *days before* Michaelmas *next, to fix on the door of the church or chapel, and of every other publick place of religious worſhip within your pariſh or other precinct; and leave at the ſame time a duplicate thereof with a churchwarden or overſeer of the poor, to be peruſed by the pariſhioners* gratis. *And the ſaid liſt you are alſo further required to deliver in at the next general quarter ſeſſions of the peace, to be holden in and for the ſaid county, in open court; or otherwiſe, you may in the mean time apply to one of his majeſty's juſtices of the peace in and for the ſaid county, and in his preſence ſubſcribe the ſaid liſt, and atteſt the truth thereof upon oath; and the ſame (being firſt alſo ſigned by the ſaid juſtice) you may deliver to me, to be by me delivered in at the ſaid next general quarter ſeſſions. Given under my hand at* Barnſkew *in the ſaid county, the* ——— *day of* ——— *in the* ——— *year* ———

Henry Holme, *High Conſtable.*

And this you the ſaid high conſtable are in no wiſe to omit, upon the peril that ſhall enſue thereof. Given under our hands and ſeals the day and year firſt above written.

B. The form of a writ to the ſheriff to ſummon jurors, for the trial of an iſſue joined.

GEORGE *the third*, &c. *To the ſheriff of* ——— *greeting. We command you that you do not omit by reaſon of any liberty within your county, but that you enter therein, and cauſe to come before* ——— *twelve good and lawful men of the vicinage of* ——— *whereof every one hath ſuch lands, tenements, or rents, as will qualify them to ſerve upon juries, and who are neither of affinity to* ——— (the plaintiff) *nor to* ——— (the defendant); *to hear and do thoſe things, which on our behalf ſhall be then and there enjoined them: And have you then there this precept. Witneſs* A. B. *and* C. D. *at* ——— *the* ——— *day of* ——— 4 & 5 W. c. 24. ſ. 15.

Note; The general precept for ſummoning jurors to the ſeſſions, is contained in the precept for ſummoning the ſeſſions, in the title Seſſions.

C. Challenge to the array, becauſe the ſheriff is of kindred to one of the parties; from *Coke*'s entries.

AND *now at this day, to wit* ——— *came the aforeſaid* A. *the plaintiff, and* B. *the defendant, by their attornies, and the jurors were impanelled, and demanded, and came, and thereupon the aforeſaid* B. *challengeth the array of the panel aforeſaid, becauſe he ſaid that that panel was arrayed by one* John Zouch, *knight, now and at the time of making the array aforeſaid, ſheriff of the ſaid county of* Derby, *which ſaid ſheriff is a kinſman of the aforeſaid* John Manners *(the plaintiff)*; *to wit, the ſon of* George Zouch, *eſquire, the ſon of* John Zouch, *knight, the ſon of* John Zouch, *eſquire, the ſon of* William *lord* Zouch, *the ſon of* Alan *lord* Zouch, *the ſon of* William *lord* Zouch, *the ſon of* Elizabeth *daughter of* William *lord* Roos, *the father of* William *lord* Roos, *the father of* Thomas *lord* Roos, *the father of* Eleanor *mother of* George Maners, *knight, the father of* Thomas *earl of* Rutland, *the father of the aforeſaid* John Maners. *And this he is ready to verify, whereupon he prayeth judgment, and that the ſaid panel may be quaſhed. Which ſaid challenge by* ———

and by ——— *triers, to this choſen and ſworn, is found true. And therefore let the panel aforeſaid be quaſhed and amoved,* &c. Tr. p. pais 160.

Challenge becauſe the panel was returned at the inſtance of the party.

And upon this, the ſaid ——— *challenges the array of the ſaid panel, becauſe he ſays, that that panel was arrayed by one* J. S. *eſquire late ſheriff of the county of* ——— *aforeſaid, at the nomination of the ſaid* ——— *and in his favour; which ſaid challenge, by triers thereof ſworn is found true.*

For other forms of challenges, and proceedings thereupon, ſee *Tr. per pais* 159—184.

Juſtifiable homicide. See Homicide.

Here endeth the SECOND VOLUME.

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